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Current Topics.

Interpretation of Statutes.

IN the construction of statutes, time and again trouble has been experienced in the endeavour to give due effect to the substantive portion of the enactment and the proviso which has been appended to it. What is the correct approach to the construction of a proviso? Some commentators on our statute law have treated what may be called the enacting portion of the section as requiring to be read without reference to the proviso; there may be cases where the first part is so clear and unambiguous as not to admit a reference to any other part, and the proviso may simply be an exception out of what is clearly defined in the first part. But what if the first part is deficient in express definition? In such circumstances the second part is complementary and essential in order to ascertain the full intention of the Legislature. The proper course, as LORD WRIGHT put it in a recent case, is to apply the broad general rule of construction, which is, that a section or enactment must be construed as a whole, each portion throwing light on the rest. It is much to be wished, however, that the Legislature might be more sparing in the provision of conundrums in its statutes, even though, it may be, the legal profession might thereby be deprived of much lucrative work in the elucidation of imperfectly drawn Acts of Parliament.

Defence Regulations and the Factories Act.

A POINT of some general importance was raised by a series of questions put to the Home Secretary by Mr. ELLIS SMITH recently in the House of Commons. Sir JOHN ANDERSON was asked—we omit matter not strictly relevant to the point above referred to—(1) whether he was aware that there was growing concern at the tendency of his Department to ignore the procedure contained in the Factories Act, 1937, and the Emergency Powers (Defence) Regulations, and to have no regard to Parliament or legal formalities; (2) whether he would inquire how far local factory inspectors were dispensing orders dealing with changes made under the Emergency Powers (Defence) Regulations 59 (1) and under s. 150 of the Factories Act without his authority, especially as this was not in accordance with the regulations, and was of doubtful validity if they were not published and were made by a delegate; and (3) whether he was aware that many workpeople's representatives had been informed that now that reg. 59 under the Emergency Powers Act, 1939, was in force the Factories Act no longer applied. Under the last question the Home Secretary was invited "as orders given by his officers support that view" to make a full statement on the position, including information as to whether all the orders made had been made within the scope of reg. 59 (1) of the Emergency Powers (Defence) Regulations or s. 150 of the Factories Act. In the course of his reply, in the form of a statement circulated to members of the House, the Home Secretary denied that the Factories Act had ceased to apply because of the existence of the Defence Regulations above referred to. He also denied that there was a tendency by his Department to ignore the statutory provisions in the Act or the Defence Regulations. It had, on the contrary, been the constant aim of the Home Office to make it clear that any exemptions from or modifications of the provisions of the Factories Act must be subject to strictly defined limits and to orders made by the Secretary of State in accordance with powers conferred on him by Parliament. He went on to point to the necessity for the institution of working hours in excess of those normally permissible in certain factories, and indicated why the plan of making orders applicable to whole classes of factories had not (as in the last war) been adopted. Factory inspectors had been instructed to submit a detailed report to the Home Office in each case so as to enable the appropriate order, after consideration of the particular circumstances, to be made; and pending the decision of the Home Office, in order to avoid holding up supplies, the inspector might intimate to the firm that as a provisional and temporary measure he would not object to certain changes of hours.

"Regulation" or "Order."

THE legality of such proceeding was challenged on the ground that the orders should have been made under s. 129 of the Factories Act, which stated that orders had to be laid before Parliament and that Parliament should have the right to annul them. In reply Sir JOHN ANDERSON adverted to the importance of the House not being left with a mistaken belief that the Home Office had in some way overridden the provisions of an Act of Parliament designed to provide for safeguards. The relevant provisions of the Factories Act were two. Section 129 laid down the procedure to be followed in the making of regulations and orders. That

section drew a distinction between regulations and orders. Regulations had to be laid before Parliament; orders were not to be laid. The orders referred to, having been made since the outbreak of war, had for the most part, so far as they had been made under the Factories Act and not under the Emergency Powers (Defence) Act, 1939, been made under s. 150. That section of the Factories Act gave power to make orders. Therefore the provisions in question had been carried into effect by order and not by regulation. It was stated, therefore, that though the orders had not been laid on the table of the House there had been no infringement of the provisions of the statute. Reverting to the statement referred to in the last paragraph it should be noted, as regards delegation, that the Home Secretary denied there was any foundation for the suggestion that orders had been made by factory inspectors. They had no power to make any such orders. The orders made, which had varied considerably in detail from case to case, were only being allowed for limited periods. Sir JOHN ANDERSON hoped to be in a position at an early date to issue a special report showing the action which had been taken and the policy which was being followed.

Road Accidents.

THE problem of road accidents was recently considered by the House of Lords, when LORD ALNESS called the attention of the Government to the increase in the number of casualties during recent months, and inquired into the Government's policy for their abatement under conditions imposed by war-time restrictions. Among remedies which he proposed were increased propaganda, the issue of a war-time Highway Code, and the improvement of vehicle lighting. He also urged that pedestrians should be enjoined, unless imperative duty required otherwise, to remain at home during the black-out period; that the Government should enforce the law that cyclists should carry a red rear light; that the speed limit of thirty miles an hour was far too high during the black-out period and should be reduced to twenty or even fifteen, and that the existing law required reconsideration and re-enac ment. EARL DE LA WARR referred to the repeated appeals which had been made to the public to wear or carry something white during the hours of darkness and alluded to the difficulty of impressing the public by such appeals. It was indicated in regard to vehicle lighting that the difficulties associated with the obtaining of rear lights for cycles were disappearing and that excuses founded on such difficulties were now being removed; and that the Government must be completely satisfied on the question of supplies before making the latest type of headlight for cars compulsory. Reference was also made to the advanced stage which had been reached in experiments directed to a modified system of street lighting which would make a profound difference to the whole situation. With regard to speed LORD DE LA WARR alluded to the difficulty of laying down a limit that could really be regarded as applicable generally to black-out conditions. A moonlight night presented conditions entirely different from a rainy or foggy night and it was better to rely upon the law of prosecution for dangerous driving. It was urged moreover that the reduction of deaths in October, compared with September—a matter which has already received attention in these columns (*ante*, p. 858)—suggested that people were becoming more accustomed to black-out conditions. It must be said, however, that the road accident figures published by the Ministry of Transport on Tuesday do not encourage optimism. They show that during November 926 people were killed on the roads—seven more than during October and 204 fewer than in September, which was the most disastrous month so far recorded. The corresponding figure for November, 1938, was 613. Of the 926 persons killed last month, 674 were killed in the hours of darkness, and of these 510 were pedestrians.

Postponed Enactments: Manorial Incidents.

IN our last issue we indicated, with particular reference to the House to House Collections Act, 1939, the measures affected by the Postponement of Enactments (Miscellaneous Provisions) Act. We propose in the following paragraphs to make further reference to the Acts which were mentioned and which are postponed in their operation by the Act. Mr. COLVILLE, Secretary of State for Scotland, recalled that under s. 140 of the Law of Property Act, 1922, the lords of manors and owners of land out of which manorial incidents formerly issued had the right to apply to the Minister of Agriculture and Fisheries for an award determining the amount of compensation to the lord for the extinguishment of these incidents. The section further provides that where no such application has been made before the end of 1940 no compensation shall be payable in respect of the extinguishment of manorial incidents. The Postponement of Enactments (Miscellaneous Provisions) Act contains a provision to the effect that no application shall be made from the date of the introduction of the Bill until the date of the termination of the war, but that applications may be resumed on that date and may be made at any time during the following twelve months. Mr. COLVILLE pointed out that the effect of the measure was to substitute for the period of thirteen months during which applications might still be made a period of twelve months from the end of the war. Provision is also made for a corresponding postponement of the date after which no compensation shall be payable. The reason for the postponement, it was intimated, was that the work involved was—as our readers will fully appreciate—of a very intricate nature. The staff of the Ministry necessary for dealing with applications was required for work more closely associated with the present emergency, and it was, moreover, undesirable that tenants, who were frequently quite small property owners of limited means, should be called upon to pay the compensation—which in some cases would be to them quite a substantial sum—during the present emergency.

Adoption of Children.

THE first Act mentioned in the schedule to the Postponement of Enactments (Miscellaneous) Provisions Act is the Adoption of Children (Regulation) Act, 1939. Sections 1 to 6 of this Act make provisions for the registration and supervision of adoption societies by local authorities and for the making of regulations by the Secretary of State with which the registered adoption societies must comply. Section 7 requires local welfare authorities to exercise control over certain cases where a third party intervenes in the adoption of children under nine years of age, and s. 11 requires a licence to be obtained before a child can be sent abroad for adoption. After thus recalling the nature of these provisions, the Secretary of State for Scotland went on to say that their operation would place on local authorities, welfare authorities and the central government departments an extra burden of work which could not be regarded as essential for war purposes. In all the circumstances the Government had come to the conclusion regretfully that it would not be desirable to attempt to bring the provisions into effect before the end of the war. The Act itself provides for ss. 1 to 6 to be brought into operation on an appointed day—to be prescribed by the Secretary of State—but it was thought to be more appropriate if the postponement of those sections were effected by statute rather than by the Secretary of State refraining to make the order declaring the appointed day. Section 8 of the Act and the corresponding Scottish provisions were not, Mr. COLVILLE said, to be postponed. These provisions amended in certain respects, as experience had shown to be desirable, the conditions to be satisfied by applicants for adoption orders in certain cases where the applicant was the mother or the putative father of the child. They were distinct from

the rest of the Act, and there was no reason why they should not come into operation on 1st January, 1940, as was originally intended.

Scottish Marriages.

THE remaining Act affected by the Act is the Marriage (Scotland) Act, 1939, which was passed to abolish what Mr. COLVILLE described as the form of Scottish irregular marriages of which the Gretna Green marriages were the best known examples. In place of the irregular marriage the Act provided a suitable form of marriage before a registrar. The Government thought this reform was very desirable, but that the Act which would have a considerable effect on Scottish social custom should not be brought into operation on 1st January. The ground must be adequately prepared before the introduction of the new form if misunderstanding were to be avoided, and in the present circumstances a little longer time was required for that purpose. If the Act were brought into operation in the early months of the war there was a risk of invalid marriages being contracted in good faith by persons who had failed to appreciate the changes in the law, and it was therefore proposed that there should be a temporary postponement of the Act, and that the appointed day should be fixed in the light of future circumstances. But the Secretary of State for Scotland indicated that, unless conditions made it impossible, it was his intention to fix 1st July, 1940, for the coming into operation of the Act.

Red Cross and St. John's Ambulance Fund: Income Tax on Subscriptions.

OUR attention has been drawn to a statement made by the treasurer of the Red Cross and St. John's Ambulance Fund to the effect that if a subscriber is willing to enter into a covenant to contribute a sum of money annually during the war to the Red Cross and St. John War Organisation he may deduct income tax and save sur-tax on such subscriptions. A deed, which has been approved by Revenue counsel, contemplates that a subscriber shall covenant with the trustees that he will during a period of seven years from the date thereof, or until the date which shall by Order in Council or otherwise be ordered to be treated as the date of the termination of the present war between Great Britain and Germany, whichever shall be the shorter period, pay to the trustees in each year a stated sum free of all deductions except income tax at the standard rate for the time being. It is pointed out that a subscriber would be under no obligation to continue payments when hostilities cease. Under this arrangement one who desired to subscribe, for example, £100 per annum would forward, while the present rate of tax is in force, a cheque for £65, and the trustees would recover the £35 deducted by the subscriber from the Inland Revenue Authorities. A subscriber assessable to sur-tax would, moreover, save the sur-tax on the £100, or the amount by which his total income is reduced. The stamp duty on the deed will be borne by the fund. Counsel has advised that payments made under the covenant above mentioned have, in law, the effect for each year of diminishing the taxed income of the donor, and increasing the taxed income of the recipient, by the gross amount of the annual payment made. In the above example the subscriber's own income as liable to sur-tax is reduced by the covenant by £100, although he makes the payment by actually paying, not £100, but only £100 less income tax at the standard rate. On the other hand, the charities are not liable to income tax. In receiving £65 in respect of a payment representing £100 of the subscriber's income they have, in effect, suffered income tax amounting to £35, and this they can recover from the Inland Revenue. Counsel alludes to certain provisions in the Income Tax Act, 1918, and in subsequent Finance Acts amending those provisions, which restrict the area over which the foregoing general rule applies, but is of opinion that this case in question is outside those provisions and is governed and protected by the general rule.

Recent Decisions.

IN *English and Scottish Co-operative Property Mortgage and Investment Society, Ltd.* v. *Odhams Press, Ltd., and Another* (*The Times*, 7th December), where the jury came to the conclusion that certain words appearing in *The Daily Herald* were defamatory in their natural and ordinary meaning but awarded the plaintiff one farthing damages, the Court of Appeal (SLESSER, MACKINNON and GODDARD, L.JJ.) upheld a decision of HUMPHREYS, J., to the effect that the words were capable of a defamatory meaning and granted a new trial limited to the assessment of damages.

In *Smith* v. *Bray* (*Wickham, Third Party*) (*The Times* 8th December), HILBERY, J., awarded the plaintiff £185 damages and costs in respect of personal injuries sustained in a collision between the car in which she was a passenger and a car driven by the defendant. On the defendant's claim against the other driver for indemnity or contribution under s. 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935, judgment was given for half those damages and costs, together with such costs as were attributable to the third party proceedings. The learned judge expressed himself as satisfied that he had power under the Act to order the third party (who appeared in person) to contribute part of the costs recoverable from the defendant, but reserved the right to alter that view in the future if the point were fully argued.

In *Aldham* v. *United Dairies* (*London*), *Ltd.* (*The Times*, 12th December), the Court of Appeal (Sir WILFRID GREENE, M.R., and MACKINNON and DU PARCQ, L.JJ.) reversed a decision of HUMPHREYS, J., and held that the appellant was entitled to damages in respect of personal injuries sustained as a result of being bitten and being dragged to the ground by a pony which belonged to the respondents and had been left unattended on the highway. The jury had awarded £300 damages, and the Master of the Rolls said that the jury must have meant that, in view of the known restiveness of the pony, the driver should have known that it became restive (*Cox* v. *Burbidge*, 13 C.B. (N.S.) 430, distinguished).

In *Wilkinson* v. *Chetham-Strode* (*The Times*, 12th December), ASQUITH, J., held that spaces about 4 feet wide in the middle of a roadway between a series of raised refuges and enclosed by their contours were not part of a pedestrian crossing, and that the plaintiff who stepped suddenly from such space on to the crossing was guilty of contributory negligence and so not entitled to succeed in his claim for damages in respect of personal injuries sustained through the negligent driving of a motor car by the defendant (see *Chisholm* v. *London Passenger Transport Board* [1939] 1 K.B. 426).

In *Powell* v. *Great Western Railway Co.* (*The Times*, 13th December) the Court of Appeal (SLESSER, MACKINNON and GODDARD, L.JJ.) upheld the decision of a county court judge to the effect that a locomotive fireman was entitled to compensation under the Workmen's Compensation Act, 1925, in respect of injuries sustained by being struck by the pellet from an air-gun which was deliberately fired at the engine by a youth. See *Thom* v. *Sinclair* [1917] A.C. 127 and *Upton* v. *Great Central Railway Co.* [1924] A.C. 302.

In *Re Temperance Permanent Building Society* (*Isles*) (*The Times*, 14th December), where a building society asked to be at liberty to exercise its remedy of possession under a mortgage pursuant to s. 1 (2) of the Courts (Emergency Powers) Act, 1939, and that the affixing on the front door of the mortgaged property of a copy of the originating summons should be sufficient notice to the respondent (the only address of the respondent which the society knew having been found unoccupied), CROSSMAN, J., held that the court, even if it had jurisdiction to dispense with service, ought not, in view of s. 1 (4) of the Courts (Emergency Powers) Act, 1939, to exercise it under an application under the Act.

Further Financial Regulations.

ORDINARY MORTGAGES.

UNDER the Defence (Finance) Regulations Amendment (No. 2) Order, 1939 (S.R. & O., 1939, No. 1620), Reg. 6, it is provided (so far as material): "Subject to such exemptions as may be granted by order of the Treasury, it shall not be lawful, except with the consent of the Treasury, and in accordance with such conditions as the Treasury may impose, to make an issue of capital in the United Kingdom . . . or postpone the date of maturity of any security maturing for repayment in the United Kingdom."

It is further provided in sub-cl. (3): "For the purposes of this regulation a person shall be deemed to make an issue of capital who—

(*a*) issues any securities (whether for cash or otherwise), or

(*b*) receives any money on loan on the terms, or in the expectation, that the loan will be or may be repaid wholly or partly by the issue of any securities, or by the transfer of any securities issued after the making of the loan."

By sub-cl. (4) it is provided that no security is to be invalid from the absence of any necessary consent to its issue or from breach of any condition of its issue imposed by the Treasury, but this is to be without prejudice to any liability of the person issuing it to a penalty.

In sub-cl. (5) it is provided that "In this regulation, references to securities and to the issue of securities respectively include, as from the 23rd day of November, 1939, references to any mortgage or charge, whether legal or equitable, and to the creation of or increasing the amount secured by any mortgage or charge. . . ."

These provisions, are, of course, mostly of interest in connection with companies and issues of stocks, etc., by them. But they are also important from a conveyancing point of view, inasmuch as they restrict the execution of ordinary, everyday mortgages. There is no doubt at all that as from the date mentioned in sub-cl. (5) an ordinary mortgage by an ordinary private individual or trustee is within the restrictions.

Under reg. 6 no security is invalid by reason of being issued contrary to the regulations. Accordingly, in normal cases, the purchaser from a mortgagee is not concerned to see that the mortgage was properly created. Nor is a mortgagee normally so concerned, except in so far as the mortgagor's liability to penalties decreases the value of his personal covenant. The person who is concerned is the mortgagor, since the offence is that of issuing the security, an expression which, by sub-cl. (3), includes the receipt of money on loan.

By reason of sub-cl. (5), the regulation covers all mortgages, legal or equitable. There is no limitation to mortgages of real property, as distinct from personalty, and it is to be noted that it is as much an offence (in view of sub-cl. (5)) to borrow more on an existing security as to issue a new one.

It is a little difficult to see how the provision about postponing the date of maturity will work. As we have seen, the rest of the regulation is directed against borrowers: but postponing the date of maturity is a thing done by the lender, who consents to be paid off at a date later than the contract date. Almost every lender on mortgage does so tacitly, by not calling in the loan six months from the date it was made. As the regulation stands, this would seem on the face of it to be an offence. One cannot predict what view the courts will take of this matter, but it seems that the obvious interpretation of the regulation would be most unfortunate.

On the same date as the main Order, there was also issued a Treasury Order (The Capital Issues Exemptions (No. 3) Order, 1939: S.R. & O., 1939, No. 1621), which grants exemptions from reg. 6, in the following material cases:—

By art. 1 there is exempted any transaction within the ambit of reg. 6 "so long as the amount of the consideration involved, together with the value of the consideration involved in any previous transactions of those kinds by the same person in the previous twelve months or in the period beginning on the 3rd day of September, 1939, whichever is the shorter period, does not exceed £10,000."

"Consideration involved" is defined as "if the transaction in question is the receipt of money on loan, the total amount of the money lent or agreed to be lent."

Article 2 (1) (*g*) and (*j*) also exempts ordinary banking advances, and transactions in pursuance of a binding obligation entered into before the 3rd September, 1939, or, in case of the issue, or renewal, or postponement of the date of maturity of any mortgage or charge (other than one to secure debentures or debenture stock), before 23rd November, 1939.

Out of this jungle of legislation, therefore, it is possible to state the law thus:—

A.—A person may borrow on mortgage any sums not exceeding £10,000 in the first twelve months of the war, or in any twelve consecutive war-time months: Treasury Order, art. 1 (1).

B.—A person may borrow any sums on mortgage if the advance is in the nature of an ordinary banker's loan. These advances, being exempt, are not to be reckoned in calculating the £10,000: *ibid.*, art. 2 (1) (*g*).

C.—A person may borrow further sums under a binding contract for further advances, and such sums do not count towards the £10,000: *ibid.*, art. 2 (1) (*j*). But this rule does not apply to mortgages to secure debentures.

D.—A person may not borrow on mortgage, legal or equitable, of realty or personalty, except as above: the principal Order, reg. 6, sub-cls. (1), (3) and (5).

E.—The Treasury may permit a person to borrow in a case which would otherwise be prohibited, and may make terms for allowing the transaction: *ibid.*, reg. 6 (1).

F.—A mortgage made in contravention of the foregoing is, however, not invalid, but the borrower may be penalised: *ibid.*, reg. 6 (4).

G.—There is a strange obscurity, already mentioned, regarding the postponement of maturity: *ibid.*, reg. 6 (1).

The persons responsible for the Treasury Order seem also to have forgotten the case of borrowings by trustees. The £10,000 of allowable borrowing is borrowing by the same borrower. But he may borrow either privately or as trustee. It surely ought not to be provided, as the existing article as it stands does in effect provide, that borrowings in one capacity are to be counted in ascertaining how much a man may borrow in another capacity.

TRUSTEES AND THE NEW GOVERNMENT SECURITIES.

The National Loans Act, 1939, s. 4, provides that securities issued thereunder are to be full trustee securities, and indeed, invites trustees to subscribe to them by providing that they may sell existing trust securities in order to do so. Moreover, it provides that trustees may invest in the new securities even though the trust instrument forbids them to do so and without any consent which that instrument makes needful.

But, when one comes to examine the two new issues, the position of trustees is by no means so inviting. In the first place, it seems to us open to doubt whether a savings certificate is a proper trust investment at all, because it does not produce income in any recognisable sense. The value of the certificate grows, but the accretions can only be got into possession by a sale.

What is much more serious is the restriction on total holdings of Defence Bonds. We have been unable to discover any formal prospectus of the Defence Bonds except that attached to the application form, which we have obtained from the post office. This document states that the bonds are an investment authorised by the Trustee Act, 1925, and

contains the following observation: "No person may at any time hold Defence Bonds in excess of £1,000, unless the bonds which give rise to the excess are inherited from a deceased holder." We do not pause to criticise the use of the word "inherited" in a loose and popular sense. The point is that no person may hold more than £1,000 of bonds. Thus, if A, B and C are trustees for two or three life tenants and sundry remaindermen, the following position emerges: (1) Since A, B and C will hold as joint tenants, *per my et per tout*, every bond held by them for the trust will count against each of them in derogation of his personal right to buy bonds; (2) every bond held by A, B or C personally will count in reckoning how many the trust may buy; (3) every bond held by A, B or C as trustee of another trust will likewise count; (4) assuming none of the three have any other bonds, they can only get £1,000 worth for the trust, however many beneficiaries there may be; (5) bonds held by the beneficiaries personally will not count in reckoning how many the trust may have.

The fact is that here, as in the regulations about loans, trustees have simply been forgotten. Of course the result will be that trustees will not buy Defence Bonds, although the Act and prospectus invite them to do so. Since most of the accumulated wealth of this country, both of great and small estates, is held by trustees, it is regrettable that the authorities should treat them so casually.

Foreclosure: Leave to Begin.

Tomley and Others v. *Gower and McAdam* (1939), 4 All E.R. 460, should be noted under the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*b*) and (4). It deals with an application for leave to institute foreclosure proceedings and discusses two points: *first*, who are the proper parties; *secondly*, the discharge by the debtor of the onus of proof which rests upon him.

Leave was given to the plaintiffs, trustees of the Order of Oddfellows (Manchester Unity Friendly Society), to proceed to foreclosure or sale of the property comprised in a legal charge, dated July, 1938. The property had a registered title, and the charge was given to secure £14,400 and interest at 5 per cent., payable annually in January and July. The principal was to be repaid by sixty half-yearly payments of £240 each, the first payment due in January, 1939.

Gower was the mortgagor; McAdam was a person interested in the equity of redemption under the legal charge. In July, 1939, £700 was due for interest; the interest was accruing since; in April, the plaintiffs had appointed a receiver out of court. McAdam filed no evidence. Gower, the applicant, had filed an affidavit, stating that in November, 1938, he had agreed to sell to McAdam the premises comprised in the charge, conditionally on McAdam being accepted as the mortgagor by the plaintiffs, and on Gower being released from liability under the charge; in January, 1939, the sale was completed; McAdam had executed the deed of release, but the plaintiffs had not consented to his registration as the registered proprietor. An affidavit was filed by the plaintiffs' solicitor in which he said that the plaintiffs had never executed the deed of release because the interest and the instalment of principal due in January had not been paid; before the outbreak of war no offer had been made by either defendant to meet the interest of £700 or the sum due in reduction of principal, £480. The registrar gave liberty to institute proceedings to enforce the legal charge by foreclosure or sale.

Bennett, J., held that Gower was a proper party to the application; the objection had not been taken before the registrar, nor had he been released by the mortgagees. Had he proved that through circumstances due to the war, he was unable to perform his obligation? He was the owner of freehold properties, four of which were substantially mortgaged, and he said that, but for the war, he would have been able to discharge his obligation out of his interests in those lands. But that was "very largely a matter of speculation." He had not proved that before the war he could have paid, nor that his inability to pay was due to the war.

Company Law and Practice.

Amalgamation of Companies: Property passing under Vesting Order.

SCHEMES of arrangement between a company and its creditors or shareholders under s. 153 of the Companies Act, 1929, require, of course, the sanction of the court to make them binding; and if it is shown that the arrangement is for the purposes of or in connection with a scheme for reconstruction or amalgamation and that under the scheme the whole or any part of the undertaking and property of any company concerned in the scheme is to be transferred to another company, the court is empowered by s. 154 of the Act to make provision for all or any of a number of specified matters. These include the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of any transferor company and the dissolution, without winding up, of any transferor company. If an order is made for the transfer of property or liabilities, then by virtue of the order the property is to be transferred to and vest in, and the liabilities are to be transferred to and become the liabilities of, the transferee company. "Property" is defined in the section as including property, rights and powers of every description, and the expression "liabilities" includes duties.

Section 154 of the Companies Act, 1929, was first introduced into the company code by that Act. Before its enactment the transfers which it contemplates could only be carried into effect by means of agreements and assignments, and commonly this involved putting the transferor company into liquidation. The complication and expense which often resulted from that state of affairs are considerably mitigated in cases falling within the section, which, as the marginal note indicates, is designed to facilitate the reconstruction and amalgamation of companies. Orders under the section are frequently made and that little difficulty has been experienced in applying its provisions during the ten years in which it has been in operation is evidenced by the absence of reported cases as to its interpretation.

There are, however, two cases in this year's law reports which involved the consideration and determination of the effect of a vesting order made under the section. In *Donoghue* v. *Doncaster Amalgamated Collieries, Ltd.* [1939] 2 K.B. 578, an order had been made under s. 154 transferring to the company the property, rights, powers and liabilities of another company. At the time of the order the appellant D was an employee of the latter under a written contract of service, and no notice to terminate the contract had ever been given to or by D, nor had he entered into any contract of service with any other person or company. The question was, whether by virtue of the vesting order the benefit of the contract of service had been transferred to the amalgamated company, i.e., was the benefit of that contract "property" within the meaning of s. 154 of the Companies Act?

Sir Wilfrid Greene, M.R., delivering the judgment of the Court of Appeal, after referring to the definition in the section of "property" and "liabilities," said this: "This language is *prima facie* wide enough to include within its range every kind of right recognised by law, including proprietary, contractual or statutory rights of every description. Similarly, liabilities of every description, and in particular contractual liabilities, are *prima facie* included. What is there to justify a restricted interpretation of these words so as to exclude certain kinds of contractual rights and liabilities? In the general purpose of the section, nothing. On the contrary,

if the power of the court did not extend to contractual rights and liabilities of all kinds, its order would be only partial in its operation and the necessary arrangements for transfer in such cases would have to be carried through by assignment, novation or other appropriate means. How in such a case the beneficent power of ordering dissolution of a transferor company without liquidation could conveniently be exercised it is difficult to see."

It was argued that the wide language of s. 154 must be so construed as to exclude an operation inconsistent with a fundamental rule of common law, viz., that contracts of personal service are incapable of assignment. The Court of Appeal, however, had no hesitation in recognising that the effect of an order under the section will inevitably run counter to rules of common law. They pointed out that if contracts of service did not pass under a vesting order, the transferee company would start its career without taking over a single employee of the transferor company and without obtaining the benefit or submitting to the burden of contracts which, according to the argument, would be excluded; and the position of the other parties to such contracts would be unfortunate, since by the dissolution of the transferor company by virtue of an order to that effect under the section, their remedy against it would have disappeared, and it was by no means clear that they would have any right to sue the transferee company for breach of the contract by the transferor company.

It was further argued that under a service contract the employee agrees to render service to the employer and to no one else, and that accordingly the result of substituting the transferee company as the employer would be not to transfer to that company the benefit and burden of the contract but to bring a new contract of service into existence, different in its terms from the original contract in that the employee would thereafter be bound to serve the transferee company, whereas his contract was to serve only the transferor company. The Court of Appeal rejected this argument on the ground that it involved too technical and rigid an interpretation of the section. "The right to the services of an employee is property of the transferor company, the liability to remunerate the employee is a liability of the transferor company, and all rights and liabilities are transferred. The language therefore is . . . wide enough to cover the case of a contract of service, and the only way in which a transfer can be made in such a case is by substituting the transferee company as employer."

As appears from the foregoing, the court decided that a vesting order made under s. 154 of the Companies Act comprises contracts of service, so that such contracts become binding on the transferee company and the employee. It will be observed from the passage quoted above that the Court of Appeal took the view that the language of the section is *prima facie* wide enough to include every kind of right recognised by law, "including proprietary, contractual or statutory rights of every description." The earlier decision of the same court in *United Steel Companies, Ltd.* v. *Cullington* [1939] 1 K.B. 644 does suggest, however, that the *prima facie* meaning of the section does not hold good in every case. There a company had been formed to amalgamate two existing companies and the amalgamation was effected by an order of the court under ss. 153 and 154 of the Companies Act, by virtue of which the undertaking, properties, rights and powers of every description of the two existing companies were transferred to and vested in the amalgamated company. The two existing companies were at the date of the amalgamation entitled under the Income Tax Acts to carry forward against future profits allowances for wear and tear and trading losses, and the amalgamated company contended that these rights had become vested in that company so that it could set off these allowances against its own profits. The Court of Appeal held that the relevant income tax provisions conferred no such right, and with that part of the decision I am not concerned. But it was also contended that the effect of the vesting order made under s. 154 of the Companies Act was to vest in the amalgamated company the rights of the original companies to claim for wear and tear and losses. This argument was rejected; the court said that the rights were on the proper construction of the Income Tax Acts rights personal to the old companies, and "it is impossible to construe s. 154 . . . as referring to rights of that character. The rights were rights of the two old companies to make deductions in respect of losses and wear and tear from their own profits. It is impossible to see how any transfer could transform rights to deduct from the profits of the old companies into a right to deduct from the profits of the new company." But in the *Donoghue Case* it will be remembered that the Court of Appeal held that rights under service contracts, which I should have thought would for most purposes be regarded as "rights personal" to the employer, were comprised in the definition of s. 154, such rights being "property"; and found no impossibility in the transfer of the liability under such contracts operating to transform the liability to serve one employer into a liability to serve a new one. The income tax case was not, I think, cited in the *Donoghue Case*, though the earlier decision of the Divisional Court in the latter case was cited in the former. I am not suggesting that there is any inconsistency in the two decisions; according to the one, rights to make deductions in respect of wear and tear and losses are not "property" within the meaning of s. 154 of the Companies Act, and, according to the other, rights in respect of service contracts are "property" within that meaning. But it may be suggested, with respect, that the views expressed in the two judgments as to the scope of the section are not entirely consistent.

A Conveyancer's Diary.

Wills.—III.

A TESTATOR sometimes wishes to tie up his land or money for as long a time as possible, and to make it as difficult as he can for a sale of the legal estate to take place. The latter point is best dealt with, as I have already explained, by the paradoxical expedient of giving the legal estate to the trustees on trust to sell, but making necessary the consent of all persons interested in possession in the income. Provision should be made that none of these persons should ever be trustees.

So far as the beneficial interests are concerned, one can give a series of limited interests for as long a period as is consistent with the modern rule against perpetuities (see *Cadell* v. *Palmer*, 1 Cl. & F. 372). The settlement there considered postponed the ultimate vesting for just over a century (see [1928] Ch. 478, note). The modern rule is that the whole beneficial interest must vest absolutely at a date less remote than twenty-one years after the death of the last survivor of certain lives in being at the testator's death. If a limitation would be void for perpetuity for no other reason than that its vesting depends on the attainment by some person of an age in excess of twenty-one, s. 163 of the Law of Property Act substitutes twenty-one for the larger figure, and so saves the limitation. The vesting referred to in the rule is vesting in interest, not vesting in possession. In many cases the lives upon which the period is to depend are the lives of beneficiaries themselves. But, so long as it is clear from the instrument what lives are being used to define the period, it does not matter whose they are. One favourite device in past days was to postpone vesting until twenty-one years from the death of the last survivor of the issue living at the date of the instrument of Queen Victoria. It would be a great mistake to use that period now. The class would be simply enormous, and there would be difficulty in tracing many of its members, especially the Romanoffs (see the affidavit of Portcullis Pursuivant of Arms *apud Re Villar* [1928] Ch. 471, at p. 473). In that case (affirmed on appeal

[1929] 1 Ch. 243) it was held that such a period, running from a date in 1926, was not void for uncertainty, a decision which must give rise to great expense. It is doubtful whether such a period would now be valid, especially since the present war seems to be causing further casualties in the House of Hohenzollern which may be difficult to trace, and it is most undesirable to take it. The issue of the late King Edward VII provide a much more manageable period, and those of the late King George V provide a very convenient, but still fairly long, one.

Until the period so chosen expires, one can limit a series of mere life interests. Before 1926 such a course was impossible owing to the so-called "rule against double possibilities" (see *Whitby* v. *Mitchell*, 44 Ch. D. 85). That rule was that no interest in land might be limited after the life interest of an unborn person to the (necessarily) unborn issue of the unborn person. But this rule was abolished by the Law of Property Act, 1925, s. 161. Consequently, one may now limit a series of successive life interests to unborn persons, so long as the ultimate absolute vesting of the estate is at a date allowable under the ordinary perpetuity rule of *Cadell* v. *Palmer*, *supra*.

A very ingenious device was used in *Re Villar* itself for dividing the income during the period among the issue of the testator. With modifications regarding the period, it can now be used successfully. I suggest that the limitation should be on the following lines :—

> "In this clause 'the period of retention' means the period ending at the expiration of twenty years from the death of the last survivor of the lineal issue of His late Majesty King Edward VII [or George V] who shall be living on the day of my death and 'my participating issue' means all issue of mine living for the time being who shall have no parent or remoter ancestor (being issue of mine) for the time being living.
>
> "During the period of retention my trustees shall divide the income of the trust fund among all my participating issue *per stirpes* and upon the conclusion of the period of retention shall hold the corpus thereof upon trust for my participating issue absolutely in the same proportions as on the preceding day the income thereof was divisible between them."

The following form is an invention of my own, and is designed for use with a landed estate, given on trust for sale, which it is desired to keep together, with only one life-tenant of the proceeds of sale (so long as there is issue in the male line), for as long a period as possible. It is very short, but I believe it to be effective. I assume that "the land" is a term already defined and that the land has already been devised on trust for sale :—

> "My trustees shall stand possessed of the land and the proceeds of sale thereof and the investments for the time being representing the same (hereinafter called the trust premises) and the net income of the trust premises (hereafter in this clause called the income) upon trust :—
>
> "(A) As to the income during the period expiring at the conclusion of twenty years after the death of the longest liver of the lineal issue living at my death of His late Majesty King Edward VII (hereafter in this clause called the period of retention) upon trust successively for all the persons who would, if the land had been conveyed to me as tenant in tail general, and if I had died without barring the entail and if the entail was never barred throughout the period of retention, have been entitled successively to the land as tenant or tenants in tail general in possession, each one, however, taking the income only as tenant for life, and if more than one person is entitled hereunder at one and the same time such persons are to take their appropriate proportions as tenants in common for their respective lives.
>
> "(B) As to the trust premises at the conclusion of the period of retention upon trust for the person or persons entitled hereunder to the income on the last day of the period of retention, and if more than one of them as tenants in common in the respective proportions to which they were so entitled to the income."

So long as there is issue in the male line the beneficial interest will stay in a single person at a time. If the estate has to pass through females there may be coparceners ; hence the necessity for references to beneficiaries in the plural.

Since 1925 it is possible, by virtue of the Law of Property Act, s. 130, to limit estates tail in personalty. Accordingly, one can now limit the interests, which were formerly only possible in a strict settlement of realty, out of proceeds of sale of land held upon trust for sale. It is thus possible to have the advantages of a trust for sale of the legal estate and those of the beneficial interests of a strict settlement at one and the same time.

Short of protective trusts or provisions which tie up the estate for a very long period, it is possible to protect the testator's children to some extent by giving them interests in capital only when they are all of age, and mere income interests till then. The following clause is directed to this purpose.

> "My trustees shall hold the trust fund and the income thereof upon the following trusts :—
>
> "(A) Upon the attainment by my youngest child of the age of twenty-one years or the death of the last survivor of my children who have not attained the age of twenty-one years to divide the trust fund into as many shares as there are children of mine actually surviving at that date or whose issue then survives and to hold the same upon trust as to one share for each child of mine so surviving and one share for each *stirps* representing a then deceased child each such *stirps* to take its respective share equally among its members *per stirpes* and in the meantime
>
> "(B) My trustees shall hold the income of the trust fund on trust to pay and divide the same equally between all my children living for the time being and in case any of my children shall die in my life-time or after my death but before the trust fund becomes divisible leaving issue such issue are to take and if more than one equally between them *per stirpes* the share of income which my child, their ancestor, would have taken if he or she had survived until the trust fund becomes divisible."

In this article I have indicated various ways in which property can be tied up, which will serve to guide solicitors as to what can be done. The ingenious will, of course, be able to invent other methods for themselves. But a word of caution is necessary : the subject is rather technical and it will generally be as well to act under advice in making such limitations. I think my suggested forms are effective, but I do not in any way warrant them as such.

(*To be continued.*)

Landlord and Tenant Notebook.

Application of Rent Acts to Houses not let when Acts passed.

Schaffer v. *Ross* [1939] W.N. 399 (C.A.), is an instructive case. In the first place, it reminds us of the importance of the decisions in the group of five cases commonly known by the name of one of them, *Lloyd* v. *Cook* [1929] 1 K.B. 103 (C.A.), the appeals being heard together. In fact, the circumstances were nearest to those of the second case of the group, *Goudge* v. *Broughton*.

In *Goudge* v. *Broughton* the facts were as follows : The plaintiff bought a cottage in October, 1925. It was not occupied by any tenant. In December, 1926, he let it to the defendant on a monthly tenancy. In 1927 he gave her notice to quit. She claimed to be protected by the then principal Act of 1920.

The plaintiff's answer was that the premises were decontrolled by the Act of 1923, s. 2 (1), of which provided: "Where the landlord of a dwelling-house to which the principal Act applies is in possession of the whole of the dwelling-house at the passing of this Act, or comes into possession of the whole of the dwelling-house at any time after the passing of this Act, then from and after the passing of this Act, or from and after the date when the landlord subsequently comes into possession, as the case may be, the principal Act shall cease to apply to the dwelling-house."

To which the defendant replied, in effect, that "landlord" was a relative term, and no "landlord" had ever been or come into possession of the house claimed. For when the plaintiff's vendor and the plaintiff had enjoyed possession, they had not experienced the joys of being landlords.

This, of course, sends one straight to the interpretation section of the principal Act, s. 12, which does, by subs. (1) (*f*), indeed mention the term. "The expressions 'landlord,' 'tenant,' 'mortgagee' and 'mortgagor' include any person from time to time deriving title under the original landlord, tenant, mortgagee, or mortgagor." This is not very helpful; the Act does not, after all, define "landlord," or even pretend to do so.

Now it is quite clear that the Acts frequently use the word "landlord" to describe one who would not enjoy that status at all at common law, for the simple reason that it is not the creature of agreement. Thus the provisions restricting the right to possession, then contained in s. 5 of the 1920 Act (now in the First Schedule to the 1933 Act), freely used (and use) the expression "landlord" to denote one whose grant has expired.

It was therefore a case for considering the object of s. 2 of the 1923 Act, and, as Scrutton, L.J., put it, if on the day after that Act was passed a freeholder had come before a judge and said "I have always been in actual possession of this house, which has never been let. Is it now decontrolled?" the answer must be "Yes; it is true that you are not strictly a landlord, as there is no tenant, but if this is the meaning of 'landlord' no landlord would ever be in actual possession at the passing of the Act; possession would always be in the tenant. *Landlord must mean owner who can let.*" Greer, L.J., said that this construction commended itself to him as one which carried out the probable intention of the Act of Parliament to bring about gradually the decontrol of property which had been controlled for reasons which no longer applied. Sankey, L.J., when concurring, expressed the hope that the matter might be taken to the House of Lords. It never was.

(One might compare the position under L.T.A., 1927, s. 1, which may call for valuation of "the reversion" either when premises have not been put or kept in repair, or when premises have not been left in repair. As Romer, L.J., pointed out in *Hanson* v. *Newman* [1934] 1 Ch. 298 (C.A.), there is, in the latter case, strictly speaking, no reversion left. But, as Luxmoore, J., had already observed, citing *Shrockmerton* v. *Tracy* (1555), Plowd. 145, "reversion" could mean what had reverted as well as what was to revert.)

The facts of *Schaffer* v. *Ross* were similar to those of *Goudge* v. *Broughton*, the premises having first been let in 1928. But the law was not quite the same, and the next point of which we are reminded by this decision is the importance of registration. For the Increase of Rent and Mortgage Interest (Restrictions) Act, 1938, enacted by s. 4 (1) that landlords in the plaintiff's position should register the properties with the local authority within three months after the passing of the Act; by subs. (2) that, failing application having been made the house should, subject as thereinafter provided, be deemed to be a dwelling-house to which the principal Acts applied; but, by a proviso foreshadowed by the "subject as," that a county court might, on application made within a year, certify that there was reasonable excuse for not making the application to register, and in that case s. 2 of the 1923 Act should apply—this being conditional on application being made within seven days. The county court judge having considered that the premises were outside the Acts in any event had never dealt with this point, and the case was accordingly remitted for a new trial.

The short history of registration commences with the 1933 Act, the first Rent Act passed to amend the Rent Acts. It accelerated the decontrol of more expensive properties (Class A) but also abolished "decontrol by possession" in the case of some low rental dwellings (Class C), by excluding them from the operation of s. 2 of the 1923 Act. But there was to be no recontrol of any such dwellings already decontrolled. Landlords claiming the benefit of this provision were to register their properties, failing which they were to be deemed to be controlled unless the county court certified there was reasonable excuse for the failure to do so. (No time limit was imposed for this *locus penitentiæ*.)

The Act last referred to made the 24th June, 1938, the day on which the whole of the legislation was to expire; the Act of 1938, however, provided that the principal Acts should continue in force till 1942, but decontrolled a further group of houses, again providing for registration of houses which it did not decontrol but which had already been decontrolled by possession. It was to this sub-group that the premises claimed in *Schaffer* v. *Ross* belonged.

It is obvious that the idea of effecting registration could occur only to a landlord familiar with the details of Rent Act legislation. In 1928, when the house was first let, it was decontrolled; according to the law as subsequently expounded in *Lloyd* v. *Cook*, the principal Act had ceased to apply to it, because the owner *could* let and was therefore its "landlord." Even if the idea that the house was a decontrolled one had occurred to him, and he had consulted his legal advisers, they would have told him, on the authority of *Cohen* v. *Gold* [1927] 1 K.B. 865 (which was overruled by *Lloyd* v. *Cook*) that previous letting was a condition precedent to decontrol and that he must have regard to the provisions of the 1920 Act. This would mean that he would have to have fixed the rent by reference to the rent at which it was let, if then let, on the 3rd August, 1914; and if, like the plaintiff in *Goudge* v. *Broughton*, he was a recent purchaser, the task might well have proved a formidable one. If he was able to establish that the house had not been let at all on the 3rd August, 1914, he would have had to pursue his researches still further back with a view to ascertaining whether and at what rent it had last been let before that date. Indeed, before the 1933 Act by s. 6 empowered a court in such cases to determine the figure by having regard to the standard rents of similar dwelling-houses in the neighbourhood, the position was frequently an impossible one; and the provision in s. 7 (1) of the 1938 Act, placing the onus on landlords (and disposing of the law in *Heginbotham* v. *Watts* [1936] 2 K.B. 6 (C.A.)) has since taken away some of the advantages conferred on landlords by s. 6 of the 1933 Act. However, in 1928 the premises which became the subject-matter of *Schaffer* v. *Ross* were in fact decontrolled, and advice to the contrary would have been erroneous. Still, it seems hardly surprising that their landlord, despite the introduction of registration in 1933, should have failed to notice that his house, though not within the sub-species provided for by the 1933 Act, was within that created by the Act of 1938; and now finds that premises which he never thought of as controlled or decontrolled are liable to be recontrolled.

When counsel engaged in a case in the Court of Appeal last week referred to the "other Court of Appeal," the Master of the Rolls said that it was a mistake to use that phrase, and it had been made so often that he was at last compelled to protest. There was only one Court of Appeal, and the correct phrase to use was "The other Division of the Court of Appeal."

Our County Court Letter.

THE LIABILITIES OF CARPET LAYERS.

In a recent case at Clerkenwell County Court (*Earl Beatty* v. *James J. Skellorn & Son*) the claim was for damages for negligence. The plaintiff had employed the defendants to lay carpets at his residence, and the evidence of a housemaid was that a stout woman, after helping to lay the carpets, had knocked over a picture with a handbag while descending the stairs. The woman and her companion then tip-toed towards the front door, but the crash was heard by the plaintiff's wife, who blamed the two women. The defence was a denial of negligence, and the two women employees stated that, while descending the stairs, they heard a crash, for which they could not account. Neither of the women had touched the picture, and it was submitted (for the defendants) that the foot of the stairs was a ridiculous place to leave a Chinese painting on glass. The road was up at the time, and the fall of the picture might have been caused by the vibration of traffic in the street, or by a draught. His Honour Judge Earengey, K.C., found the case proved. The value of the picture must be assessed on the basis of the cost of replacement. Judgment was therefore given for the plaintiff for £40 and costs.

LIABILITY FOR FURNITURE ON APPROVAL.

In *John A. Pearson, Ltd.* v. *Lady Duff-Assheton-Smith*, recently heard at Westminster County Court, the claim was for £173 as the price of goods sold. The plaintiffs were antique dealers and their case was that valuable pieces of period furniture had been required by the defendant. Some specimens were accordingly obtained by the plaintiffs, on sale or return, from other dealers, and were sent to the defendant's house, where they were set out for approval. The articles selected were four dining-room stools and two armchairs at £105 ; a bedroom cabinet at £14 ; four armchairs at £36, and a pair of armchairs at £18. These were taken back to the plaintiffs' premises to be finished to match the house decorations. In reply to a letter requesting payment, the defendant referred the plaintiffs to a third party (a decorator and upholsterer) who was in charge of the decorations and had introduced the defendant to the plaintiffs. In a letter to the plaintiffs, however, the defendant explained that their chairs were too expensive and she offered £125. This offer was refused, and, in a subsequent telephone conversation, the defendant asked for the goods to be taken back. The defendant's case was that she thought she was dealing financially with the third party. She was under the impression that the goods were sent to her house on sale or return and she only bought twelve chairs for £75. A cheque for this amount was sent to the plaintiffs, through the third party, and there was no discussion about buying the other items. These had been removed from her house by the third party. His Honour Judge Austin Jones held that the furniture was merely sent to the defendant's house on approval. Judgment was given for the defendant, with costs.

LEAVE TO DISTRAIN.

In a recent case at Newton Abbot County Court (*West* v. *Jackson*) an application was made under the Courts (Emergency Powers) Act, 1939, s. 1 (2) (*a*) (i) for leave to distrain. The applicant's case was that she owned a house at Teignmouth, which had been let on a yearly tenancy to the defendant. The latter left without notice, in September, 1939, and had moved her furniture to a store in Newton Abbot. The arrears of rent were £60. The application was opposed by a third party, whose evidence was that the defendant, owing to war conditions, had failed to run the premises as a boarding house. The furniture was therefore bought by the third party, in order to help the defendant in her difficulty. Being unaware of the fact that £60 was owing for rent, the third party had paid for the furniture in treasury notes, and had omitted to take a receipt. His Honour Judge Thesiger granted the application, with costs.

Reviews.

The Law Relating to Trusts and Trustees. By the late Sir Arthur Underhill, LL.D., Bencher of Lincoln's Inn and Senior Conveyancing Counsel of the Court. Assisted by Edward Bagshawe, M.A., of Lincoln's Inn, Barrister-at-Law. Ninth Edition. 1939. Royal 8vo. pp. cxli, 567 and (Index) 116. London : Butterworth & Co. (Publishers), Ltd. 47s. 6d. net.

In recent years it has been a source of regret to practitioners that there has been no fresh edition of " Underhill on Trusts " since a date before any cases on the property legislation of 1925 had been decided. The present work is therefore much to be welcomed. Though Sir Arthur Underhill himself was unable, through the onset of his last illness, to complete the revision, the task has been successfully accomplished by Mr. Bagshawe and his assistant, Miss Wells. The whole work has been brought up to date, but retains its former concise and accessible arrangement.

Where necessary, entirely fresh sections have been inserted, dealing, for example, with the vexed question of the meaning of an " immediate binding trust for sale " (p. 227), and the abolition of restraints on anticipation (p. 76). Moreover, there is a discussion (p. 520 and following) of the effect of the Limitation Act, 1939, s. 19, which comes into force next July, though not of s. 7 of that Act, which deals with trusts of land.

It may be permissible to wonder whether sufficient attention is given to the troublesome matter of the statutory trusts under the Law of Property Act, 1925, especially in connection with their operation upon pre-existing trusts and rights (p. 233) and the obscure question of the persons entitled to appoint new trustees of them (see " Wolstenholme," 12th ed., p. 1328). And more might, perhaps, usefully be said (at p. 229) on the effect of the Law of Property Act, s. 28 (1), which allows trustees for sale of land to re-invest in land.

In a work of such magnitude, other points for detailed criticism might well be found, but they cannot affect the fact that a new edition of so convenient a text-book will be much appreciated by the profession.

Books Received

Income Tax. Tables showing tax grossed up at 7s. in the £ on varying amounts from 1d. to £10,000 and Tables showing Tax grossed up at 7s. 6d. in the £ on varying amounts from 1d. to £10,000. Compiled by A. J. Allerton. London : Gee & Co. (Publishers), Ltd. Price 1s. each net.

A.B.C. of War-time Law. By Robert S. W. Pollard, solicitor. 1939. pp. (with Index) 127. London : Hamish Hamilton, Ltd. 1s. 3d. net.

1939 *Cumulative Supplement to Eighth Edition of Dymonds' Death Duties.* pp. 23. London : The Solicitors' Law Stationery Society, Ltd. 2s. 6d. net.

Tax Cases. Vol. XXII. Parts VI and VII. 1939. London : H.M. Stationery Office. 1s. each, net.

The Juridical Review. Vol. LI. No. 4. December, 1939. Edinburgh : W. Green & Son, Ltd. 5s. net.

The New Excess Profits Tax. A full detailed Synopsis in Chart Form. Compiled by Chas H. Tolley, A.C.I.S., F.A.A., Accountant. London : Waterlow & Sons, Ltd. 2s. net.

Loose-Leaf War Legislation. Edited by John Burke, Barrister-at-Law. Parts 6, 7 and 8. London : Hamish Hamilton (Law Books), Ltd. 5s. per part, net.

Slater's Mercantile Law. By R. W. Holland and R. H. Code Holland, of the Middle Temple, Barrister-at-Law. Eleventh Edition. 1939. Demy 8vo. pp. xliv and (with Index) 652. London : Sir Isaac Pitman & Sons, Ltd. 7s. 6d. net.

To-day and Yesterday.

LEGAL CALENDAR.

11 DECEMBER.—The wretched condition of the United States, bordering on bankruptcy and anarchy, immediately after the War of Independence, is forcibly set out in the charge of Judge Pendleton to the Grand Jury of Georgetown, delivered on the 11th December, 1786, urging them to do their duty and name in their presentments public officers who refused to fulfil their functions. He spoke of the imminent danger of "the utter destruction of all public and private credit, a bankrupt treasury and the triumph of all manner of fraud, rapine and licentiousness," so that the Government would "tumble about our heads and become a prey to the first bold ruffian who shall associate a few desperate adventurers and seize it."

12 DECEMBER.—The chronic trouble of the great Bacon seems to have been shortage of money. Possibly it was a sympathy born of this experience that made him so active while he held the Great Seal in trying to find James I financial expedients. He did good service in the matter of the fines imposed on the Dutch merchants for exporting gold and silver. He had lately received a grant of £1,200 a year, yet writing to Buckingham on the 12th December, 1619, about the appropriation of the proceeds of these penalties he set down: "If the King intend any gifts, let them stay for a second course but nothing out of these, except the King should give me the £20,000 I owe Peter Vanlore out of his fine which is the chief debt I owe." He added: "This I speak merrily."

13 DECEMBER.—On the 13th December, 1762, Peter Annet, an active sceptic, then in his seventieth year and "withered with age," stood in the pillory at Charing Cross for trying to show in an article "that the prophet Moses was an impostor and that the sacred truths and miracles recorded and set forth in the Pentateuch were impositions and false inventions, and thereby to infuse and propagate irreligious and diabolical opinions in the minds of His Majesty's subjects and to shake the foundations of the Christian religion."

14 DECEMBER.—On the 14th December, 1650, Anne Greene was hanged at Oxford. During the half-hour that she was suspended her friends did all they could to dispatch her, thumping her on the breast, hanging on to her legs and pulling her down with a jerk after lifting her up, so as to put her quickly out of her pain. Yet after the body had been carried in a coffin to a private house it still showed signs of life, and "a lusty fellow," also charitably intending to end her misery, stamped several times on her stomach. At that point a professor of anatomy arrived and intervened with such good effect that in five days the lady was well again.

15 DECEMBER.—Andrew Fletcher, Lord Milton, for many years Lord Justice Clerk, died at Brunstane, near Edinburgh, on the 15th December, 1766.

16 DECEMBER.—On the 16th December, 1858, James Atkinson, the son of a flax spinner, was tried at York for the murder of the girl he had been courting. As there was no doubt that he had cut her throat in a lane, the defence fell back on insanity, and the evidence reads like one of those excessively stark rural novels. It seems that his brother was an idiot, his aunts were lunatics, his uncle was a furious maniac, while his grandmother, his great-grandfather and his grandfather's brother were all insane. His own mental capacity was said to be that of a child of ten. The jury found for the defence.

17 DECEMBER.—The Old Bailey Sessions which ended on the 17th December, 1783, were among the busiest ever recorded. Twenty-four convicts were condemned to death, thirty were sentenced to be transported to America, twenty-five were sent to hard labour in the House of Correction, twenty-one were directed to be whipped, thirteen were to suffer short terms of imprisonment in Newgate. This crop of sentences was considered remarkable.

THE WEEK'S PERSONALITY.

Andrew Fletcher, Lord Milton, is among the youngest men who ever held high judicial office, for he was only thirty-two when he was appointed an ordinary lord of Session in 1724. Two years later he became a lord judiciary, and in 1735 he made his final upward step, becoming Lord Justice Clerk. In this position it fell to him to deal with the prisoners tried after the failure of Prince Charlie's rising, acting not only with discretion but with leniency. In 1748 he resigned his office, "but retained the charge of superintending elections which he considered his masterpiece." Thus the Bench lost a judge notable for his acute judgment and accurate knowledge of laws and customs of Scotland. In the years following the rising, however, he strenuously exerted himself in promoting the trade and agriculture of the country. This was a matter which had interested his energetic mother before him. She had distinguished herself by visiting Holland with a weaver and a millwright and discovering the secret of dressing the fine linen called holland, the manufacture of which she introduced into the neighbourhood of Salton. Lord Milton lived till his seventy-fifth year, when he died after a long illness.

DANGEROUS AMBIGUITIES.

Mr. Registrar Owen White recently wrote to a newspaper which had reported him as having said at Whitechapel County Court that solicitors did their work in a slipshod way, to point out that his remarks referred to some solicitors only and not to all. It is always well to be careful how you put any observations about the profession. Once at the Glamorgan Assizes a defendant was asked with regard to his legal advisers: "Were they not a respectable firm of solicitors?" He replied: "Yes, as solicitors go." To his discomforture Mr. Justice Field angrily turned on him expressing surprise at hearing such a remark from a man of position and intelligence. The witness said it was a slip of the tongue, and the judge warned him not to let his tongue slip in future, adding: "I have been a solicitor myself." That revelation added fervour to the culprit's apology.

MAKING AMENDS.

Even judges have been known to utter in hasty moments generalisations, the natural meaning of which tended to reflect unfavourably on individuals. Mr. Maurice Healy, K.C., in his charming book of reminiscences, gives a splendid example of such an incident and the way to make amends for it. As a young man he defended a prisoner tried at the Kerry Assizes on a charge of highway robbery. Though the witnesses for the defence all appeared to be superior and honourable people old Chief Baron Palles was strongly convinced of the guilt of the accused. His summing up was full of scorn and indignation, and in the course of it he said: "When I was at the Bar there were counsel strong enough, aye, and honourable enough to say: 'I will not put such witnesses in the box to commit perjury!'" He then virtually directed an acquittal and forgot all about what he had said. During the adjournment someone pointed out to him the implications of his words, and immediately on returning to court he addressed Healy: "I have been told that this morning I used words which might be understood as imputing dishonourable conduct to you. As dishonour is a word that I am sure I could never properly associate with your name I have sent for you to express my regret with the same publicity as attached to my error."

CHRISTMAS APPEALS

Please don't
let it be a
"BLACK-OUT CHRISTMAS"
for the 8,250 boys and girls
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Dr. BARNARDO'S HOMES
War is adding greatly
to our anxieties.
CHRISTMAS GIFTS
of
10/-
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Cheques payable "Dr. Barnardo's Homes," and crossed "Barclays Bank Ltd., a/c Dr. Barnardo's Homes," addressed Dr. Barnardo's Homes, 18 to 26, Stepney Causeway, London, E.1.

BEQUEST FORMS ON APPLICATION TO THE GENERAL SECRETARY.

TELEPHONE NO.: STEPNEY GREEN 4232.
(General Secretary's Office).

Your help *now!*

The continuance of The Salvation Army's work is solely dependent upon the generosity of its friends. Help by legacy is earnestly needed and gratefully received. Bequests may be allocated to any specific phase of activity. Fullest particulars of institutions and their scope will be willingly supplied. Please write for illustrated brochure, or any detailed information to:

General George L. Carpenter,
101 Queen Victoria Street,
London, E.C.4.

means help for others *Later*

***The* Salvation Army**

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WILL LAWYERS KINDLY ADVISE THEIR CLIENTS TO HELP THIS SOCIETY.

Please send Cheques, Notes, or Postal Orders to—

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Ask for our Report

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And read for yourself of the work which is being done in these homes. Over **5,000** necessitous Motherless and Fatherless boys and girls have found in the homes the care-free happiness of childhood, which, with the mental, moral and physical training given, has helped them to useful citizenship. BRIXTON and TWYNHOLM Orphanages have been absorbed into SPURGEON'S ORPHAN HOMES and the need is always present for continued support from the benevolent-minded, in the form of

LEGACIES and DONATIONS

The last Annual Report will gladly be sent on application to the Secretary, Mr. B. Rodwell.

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(Founded by CHARLES HADDON SPURGEON.)
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REMEMBER THE FORGOTTEN

On Christmas Day the **LAMBETH MISSION** gathers in the Aged Poor, the Homeless, the Lonely and the Forgotten, to a good Christmas Dinner and Entertainment. The atmosphere is not formal, but one of warm human sympathy. They are God's guests and therefore ours. The Mission also provides parcels of groceries for Lambeth's distressed homes and Happy Hours for Lambeth Children.

WE APPEAL TO YOU to give them all a **MERRY CHRISTMAS** by sending your gift to

Rev. Thomas Tiplady, H.C.F., Lambeth Mission Buildings, Lambeth Road, London, S.E.1.

Practice Notes.

"AT THE HEARING."

THE county court judge has power to certify "at the hearing" that the fee for counsel and the solicitor's charges for taking instructions for brief ought not to be limited to the "scale" amount: County Court Rules, 1936, Ord. XLVII, r. 21 (1) (3).

Tenants of premises applied, under s. 5 of the Landlord and Tenant Act, 1927, for a new lease, or, alternatively, for compensation for goodwill, and they served the notice on the reversioner. The matter was referred to a referee under the Act for inquiry and report; he gave directions and fixed a date for the hearing. The tenants subsequently served a notice of discontinuance, and the reversioner applied for an order for directions as to taxation of costs. The county court judge directed the tenants to pay the reversioner's costs, on Scale C. He certified for two counsel (r. 21 (2)), for plans (r. 22 (1)), and for two expert witnesses (r. 30). He refused to certify for a higher fee for counsel, under r. 21 (1), or for a higher fee for solicitor's instructions for brief, under r. 21 (3). The reversioner then applied to the judge to consider the referee's report and "to hear" the parties and to make such order as might seem just. The judge dismissed the application.

On appeal it was held that neither application before the judge could properly be described as "the hearing": *University Motors, Ltd.* v. *Barrington* (1939), 83 SOL. J. 256; 55 T.L.R. 447. The first occasion was simply to ascertain the rights of the parties on discontinuance. The second application was to ask the judge to consider a report which required no consideration.

The meaning of the term "the hearing" depends upon the context and the circumstances of the case. It may cover all occasions upon which the judicial officer is exercising his functions, as was held in *Green* v. *Lord Penzance*, 6 A.C. 657. For an account of the various uses of the term, see Stroud, "The Judicial Dictionary" (1903), 2nd ed., vol. II, pp. 856, 857.

The hardship of this case has since been properly met by an amendment of r. 21 (1) and (3) and the addition of para. (4)—which came into force on 1st October, 1939: the County Court (No. 1) Rules, 1939 (25th July), r. 8 (*e*) (i) (ii) (iii). From paras. (1) and (3) the words "at the hearing" will be omitted. By para. (4), an application for a certificate may be made *either* "at the hearing," *or* "on notice" served on the party sought to be made liable. This notice must be given within seven days of the order awarding costs, *or* within seven days of receiving a notice of payment into court or of notice of discontinuance. But where an application which could have been made at the hearing is made later, the judge may, on that ground, refuse the application.

Mention of a further welcome amendment to para. (3) may be appropriate. If the judge is satisfied that the solicitor's charge for instructions for brief to counsel on *trial*, or *arbitration*, or *reference*, or the solicitor's charge for attendance at court in conducting the case himself, ought not to be limited to the scale amount, and if he certifies accordingly, a larger *fee* may be allowed on taxation, as the registrar thinks reasonable. After the words "or reference," will now be added the words "or for preparing notes of facts or arguments for trial." Further, for the word "fee," read henceforth "charge."

Mr. T. H. Parr, the editor of the House of Commons *Official Report*, is to retire on the 31st December. The Speaker has appointed as his successor Mr. P. Cornelius, the present assistant editor, and has appointed Mr. F. W. Mullins to be assistant editor.

The staff of the Incorporated Society of Auctioneers and Landed Property Agents are again working at the Society's headquarters in London. Communications should be addressed to the Acting Secretary, 34, Queen's Gate, London, S.W.7. The telephone number is Western 0034.

"APPEALS" WHICH SHOULD NOT BE DISMISSED.

THE stress of war makes it more imperative than ever to continue our practice of calling attention, at this season of the year, to the appeals for support made by organised charitable institutions. Increased financial assistance is and will be needed to enable them to carry out the greater demands made for their services. In the hope that our Christmas-time Appeals in past years have met with a certain amount of success, we are pleased to set out the following details of some of the deserving institutions which are in great and urgent need of support:—

The Royal Cancer Hospital is supported entirely by voluntary gifts. It receives no grants from any Government or municipal service. No payments are asked from patients. No recommendation-letters are necessary. The only passports are the fact that the applicant is afflicted by cancer or tumour, and is unable to pay. In addition to the care of patients, a research institute is carried on by a trained scientific staff, engaged in investigating the problems of this fell disease. This adds seriously to the annual expense, but it is work of such world-wide reputation and importance that its hampering for want of funds would be a world-wide disaster. Donations should be sent to the Treasurer, The Royal Cancer Hospital (Free), Fulham Road, S.W.3. Assistance is also urgently needed by the Imperial Cancer Research Fund, of Queen Square, W.C.1 (Hon. Treasurer, Sir Holburt Waring, Bt., c/o Royal College of Surgeons of England, Lincoln's Inn Fields, W.C.2), and by the National Society for Cancer Relief, of 47, Victoria Street, S.W.1. Many institutions engaged in cancer research receive support from the British Empire Cancer Campaign and financial assistance to help with the work of this organisation will be gratefully received by the Hon. Treasurer, 11, Grosvenor Crescent, S.W.1.

Brompton Hospital, S.W.3, instituted in 1841, is the leading hospital for consumption and all chest diseases, and the research work carried on by the hospital is of international importance. It has a modern hygienic sanatorium at Frimley, Surrey, and altogether it has 500 beds which are constantly occupied. £110,000 is needed very year for maintenance.

At St. John's Hospital for Diseases of the Skin, 5, Lisle Street, Leicester Square, W.C.2, over 1,000 cases are treated every week at the out-patient department, and the in-patient department has forty beds and a waiting list. The hospital urgently needs assistance. Legacies are also needed by The National Hospital, of Queen Square, W.C.1. This hospital specialises in the relief and cure of diseases of the nervous system, including paralysis and epilepsy.

The Royal Hospital and Home for Incurables, of Putney, provides a home, skilled medical treatment and nursing for 250 in-patients and life pensions for over 600 incurable invalids. Funds are needed to continue this merciful work. The Secretary's offices are at 42, Gracechurch Street, E.C.3. War or no war, 100 middle-class men and women who are incurable invalids at the Home for Incurables, Streatham, must be helped and cared for, also 300 others who are able to be with friends or relatives for whom pensions for life have to be provided. Donations, etc., should be sent to the British Home and Hospital for Incurables, Streatham, at the Secretary's office, 73, Cheapside, E.C.2.

Among the many children's hospitals in need of assistance are the Princess Louise Kensington Hospital, of St. Quintin Avenue, W.10, and the Hospital for Sick Children, of Great Ormond Street, W.C.1.

We have not sufficient space at our disposal to refer to every hospital requiring help, but we feel that the following should not be forgotten: Guy's Hospital, S.E.1, St. Thomas's Hospital, S.E.1, and Westminster Hospital, S.W.1. In addition to making an appeal on behalf of these hospitals

we should like to call attention to King Edward's Hospital Fund for London, which receives subscriptions, donations and legacies for distribution among the London Voluntary Hospitals. These should be addressed to the Fund at Box 465A, 10, Old Jewry, E.C.2.

The Royal Surgical Aid Society, established in 1862, relieves 2,000 sufferers *each month* with surgical appliances, for which they cannot pay because of their very limited means. Donations should be sent to the Secretary at the offices of the Society, Salisbury Square, Fleet Street, E.C.4.

There are many deserving charities whose principal objects are child welfare, and of these the Waifs and Strays Society cares for 4,800 children. Bequests are needed and should be sent to the Church of England Incorporated Society for providing Homes for Waifs and Strays, Old Town Hall, Kennington, S.E.11.

The Shaftesbury Society (Ragged School Union, 1844) serves the crowds of children and families packed in miserable homes and mean streets. Special agencies minister to human needs from before birth to old age. Gifts will be gratefully received by the Secretary at John Kirk House, 32, John Street, W.C.1.

The Shaftesbury Homes and "Arethusa" Training Ship, whose President is H.R.H. the Duke of Kent, K.G., has 1,165 poor children under its care. Donations and legacies are urgently needed to meet heavy expenses and should be sent to the Society's office, 164, Shaftesbury Avenue, W.C.2.

The Royal Soldiers Daughters' Home provides maintenance, clothing and education for daughters of soldiers, whether they are orphans or not. The children are trained for domestic service and in special cases for trades. Annual subscriptions and donations should be sent to the Secretary at the Home, 65, Rosslyn Hill, Hampstead, N.W.3.

Spurgeon's Orphan Homes give motherless or fatherless boys and girls the benefits of educational advantages and religious training, and at Dr. Barnardo's Homes there are always over 8,000 children being cared for. Donations should be sent to Spurgeon's Orphan Homes, Clapham Road, Stockwell, S.W.9, and Dr. Barnardo's Homes, 18/26, Stepney Causeway, E.1.

Among other deserving institutions of this nature in need of assistance are the N.S.P.C.C., of Victory House, Leicester Square, W.C.2, and the London Orphan School and Royal British Orphan School, of Watford (offices at 15, St. Helen's Place, Bishopsgate, E.C.3).

Miss Smallwood's Society for the Assistance of Ladies in Reduced Circumstances, of Lancaster House, Malvern, carries on unceasing work on behalf of those who have become poor through no fault of their own. Money is needed to help this society so that the work may go forward. Help is also required by the Distressed Gentlefolks' Aid Association, 74, Brook Green, W.6.

Funds are urgently required by the Incorporated Soldiers and Sailors Help Society (Lord Roberts Memorial Workshops) for the purpose of maintaining its present work of providing for the growing needs of ageing men who sustained life-long disablement in the Great War, and to enable the society to meet the heavy burden of responsibility it will be called upon to assume in the immediate future on behalf of men who are serving with H.M. Forces in the present war. Contributions should be sent to the Hon. Treasurer, Admiral of the Fleet Sir Roger Keyes, Bt., G.C.B., at 122, Brompton Road, S.W.3. An appeal is also made on behalf of Earl Haig's British Legion Appeal Fund, whose organising Secretary, Captain W. G. Willcox, M.B.E., would welcome donations at 29, Cromwell Road, S.W.7. The splendid work carried out by the British Legion amongst ex-service men, including the disabled and their dependants, is known to everyone and it is vitally necessary that their funds should be strengthened to enable them to carry on this work.

The Star and Garter Home for Disabled Sailors, Soldiers and Airmen, Richmond, Surrey, is a memorial of the Great War and permanent institution for the treatment of wounded and otherwise disabled men of H.M. Forces. Donations, etc., should be sent addressed to the Commandant at the above address.

The British Sailors' Society provides home and overseas rest for sailors, and cares for their widows and orphans. Donations should be addressed to the Society's headquarters, 680, Commercial Road, E.14.

Funds are needed by the Salvation Army and the Church Army to help them carry on their work. Gifts should be sent to 101, Queen Victoria Street, E.C.4, and to Preb. Carlisle, C.H., D.D., 55, Bryanston Street, W.1, respectively.

The happiness of those afflicted with blindness and deafness is greatly increased by the efforts of St. Dunstan's, who care for soldiers, sailors and airmen blinded in war, the National Institute for the Deaf, and the National Library for the Blind. Gifts and subscriptions would be gratefully received at St. Dunstan's, Regents Park, N.W.1, 105, Gower Street, W.C.1, and 35, Great Smith Street, S.W.1, respectively.

Assistance is also needed by The National Association of Discharged Prisoners' Aid Societies (Incorporated), of 62, Whitcomb Street, Leicester Square, W.C.2, to help in carrying on its task of caring for discharged prisoners and for the dependants of those now serving sentences.

The Church of England Pensions Board renders financial aid to clergymen's widows who find themselves compelled to depend on outside assistance for the necessities of life. Funds are urgently needed and should be sent to the Secretary at The Moorings, Hindhead, Surrey.

An increase in contributions is required by the British and Foreign Bible Society, which has already issued copies of the Scriptures in 723 languages. The address of the Secretaries is Bible House, 146, Queen Victoria Street, E.C.4.

The People's Dispensary for Sick Animals of the Poor also requires financial assistance in its good work. Donations should be sent to 14, Clifford Street, New Bond Street, W.1.

In concluding our appeal to the legal profession we must mention those organisations the objects of which are most directly concerned with their fellow-members. Of these, The Solicitors' Benevolent Association, Clifford's Inn, Fleet Street, E.C.4, and The Law Association, 3, Gray's Inn Place, W.C.1, would gladly welcome any assistance, however small. The former distributed in relief last year £20,259 and the latter £2,268.

These are obviously only a few of the various charitable organisations urgently requiring funds, but we hope that perhaps this short notice may assist readers who at this festive season desire to make some small contribution to the happiness and welfare of others less fortunate than themselves.

Obituary.

MR. W. H. BUDGE.

Mr. William Hatton Budge, Registrar of the Bournemouth Group of County Courts, died on Saturday, 9th December, at the age of fifty-eight. Mr. Budge was admitted a solicitor in 1907.

MR. J. M. L. CRIDDLE.

Mr. John Milton Leigh Criddle, solicitor, of Messrs. Criddle, Ord & Muckle, solicitors, of Collingwood Street, Newcastle-on-Tyne, died recently at the age of ninety. Mr. Criddle was admitted a solicitor in 1881, and entered the Newcastle City Council in 1896. He was elected Alderman in 1916.

MR. A. W. DENTON.

Mr. Albert Woodruffe Denton, solicitor, of Huddersfield. died on Tuesday, 28th November. Mr. Denton was admitted a solicitor in 1889.

Notes of Cases.

Court of Appeal.

Stimpson *v.* Standard Telephones and Cables, Ltd.

Greene, M.R., MacKinnon and du Parcq, L.JJ.
2nd November, 1939.

MASTER AND SERVANT—DANGEROUS MACHINE IN FACTORY—FAILURE TO PROVIDE GUARD—INJURY TO INFANT EMPLOYEE—LIABILITY OF EMPLOYERS—ACCEPTANCE OF COMPENSATION—WHETHER BAR TO ACTION FOR DAMAGES—FACTORY AND WORKSHOP ACT, 1901 (1 Edw. 7, c. 22), s. 10—WORKMEN'S COMPENSATION ACT, 1925 (15 & 16 Geo. 5, c. 84), s. 29 (1).

Appeal from Hilbery, J. (83 SOL. J. 440).

The company occupied a factory producing for trade and sale telephone switchboards and radio equipment. A girl fourteen years old was employed in a room in which was effected the reproduction of copies of documents, forms and blue prints by photographic process. This involved the use of a drying machine electrically driven. The girl had to hold the prints by the top corners, apply their full width to a rotating drum and cause them to make contact as they slid upwards between her fingers. While she was so engaged her left hand was caught in the machine and seriously hurt so as to be permanently disfigured. Payments under the Workmen's Compensation Act, 1925, were applied for, received and accepted on her behalf, but subsequently she and her father brought an action against the company for damages for negligence and for failure to fence the machine in accordance with the Factory and Workshop Act, 1901, s. 10. Hilbery, J., dismissed the action, holding that the room was a non-textile factory, that the machine was dangerous and that the failure to provide a finger guard was a contravention of s. 10, but that the plaintiffs had failed to satisfy him that the company's breach was the cause of the accident. He held that the precise circumstances in which the girl's hand came to be where it was were not established so as to enable him to make any definite finding on the matter, and also that there was not enough evidence to establish contributory negligence by the girl. In case he was wrong in dismissing the action, he assessed the girl's damages at £750 and her father's special damages at £17 2s.

GREENE, M.R., allowing the plaintiff's appeal, said that this was dangerous machinery which the company were under a statutory obligation to fence. If it had been fenced, as it could well have been, the accident could not have happened. Those two circumstances were enough to establish the necessary causal connection between the negligence of the company and the injury to the girl. Not till that stage was reached did the further question arise whether she was guilty of contributory negligence so as to deprive her of her right to recover. To say it was necessary to prove causal connection between the breach of duty and the accident was not the same thing as saying that the plaintiff must establish that the accident occurred otherwise than by some negligent act on her part (*Caswell* v. *Powell Duffryn Associated Collieries, Ltd.* 108 L.J.K.B., at pp. 786, 788, 794). As to contributory negligence, though the girl did not explain how the accident happened and the judge took the view that she could have explained it had she wished, he was not bound to draw an inference against her that she had been guilty of an act which was the substantial cause of the accident. The court could not here differ from his finding. It was further said that from the acceptance of compensation on behalf of the plaintiff it followed that she could not seek damages at common law (*Perkins* v. *Hugh Stevenson & Sons, Ltd.*, 83 SOL. J. 655; 161 L.T. 149). For such payments to operate as a discharge of the employer they must be made as Workmen's Compensation Act payments and received as such. In the case of adults no difficulty arose. But in the case of an infant the question must be investigated whether it was for the infant's benefit that the payments should be made. *Perkins* v. *Hugh Stevenson & Sons, Ltd., supra*, and *Selwood* v. *Townley Coal and Fireclay Co., Ltd.*, 83 SOL. J. 780; 56 T.L.R. 6, did not help the company. The court must put itself in the chair of a hypothetical adviser to the infant knowing all the facts known at the time and with a competent knowledge of law (*Murray* v. *Schwachman, Ltd.* [1938] 1 K.B. 146; 81 SOL. J. 294). Such an adviser would have had to consider the legal risks and the chances of failure in a common law claim. Here no legal problem would have given him any difficulty, and it would not have been hard to give advice on the question of contributory negligence. This girl was suffering a permanent incapacity, which might affect her earning power, her ability to play games and her enjoyment of life, and a disfigurement affecting her appearance. These matters were taken into account in a claim at common law, but not under the Workmen's Compensation Act. Further, if a workman proceeded at common law, but failed to establish a case though he proved facts which would entitle him to compensation under the Act, he could obtain that compensation, subject to the risk of costs being deductible from it. Here the proper advice to the girl would have been to proceed at common law.

MACKINNON and DU PARCQ, L.JJ., agreed.

COUNSEL: *A. A. Watson; Sellers*, K.C., and *Jukes* (for *J. Pugh*, on war service).

SOLICITORS: *Royds, Rawstorne & Co.; Carpenters.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

G. T. Hodges & Sons *v.* Hackbridge Park Residential Hotel, Ltd.

Scott, Clauson and Goddard, L.JJ.
13th November, 1939.

PRINCIPAL AND AGENT—ESTATE AGENT—SALE OF HOTEL—INTRODUCTION OF PROSPECTIVE PURCHASER—COMPULSORY SALE UNDER STATUTE—CLAIM FOR COMMISSION.

Appeal from Lewis, J.

In 1933, as a result of correspondence between the plaintiffs, who were estate agents, and the defendants, who owned an hotel, the plaintiffs put the hotel on their books with a view to finding a purchaser at a price of £8,750, but any such mandate given by the defendants was withdrawn early in 1934 though the plaintiffs did not take the property off their books. In November, 1936, the plaintiffs introduced to the defendants the colonel commanding a territorial regiment, who was seeking a sports ground and premises for his unit. In January, 1937, he visited the hotel and its grounds, where he met the defendants' managing director and offered £8,750, the sum mentioned to him by the plaintiffs. The defendants, however, refused to accept less than £12,500. Though the colonel, as commander of the unit, was able and entitled to negotiate for the purchase at the price he had offered, the War Office on becoming aware of the hotel, wished to buy it for the City of London Territorial Army Association. In July, 1937, a notice to treat made under the appropriate statutes, including the Acquisition of Land (Assessment of Compensation) Act, 1919, was served on the defendants. They were thereby notified that the Secretary of State for War required to purchase the premises absolutely, and that if within fourteen days they refused to treat or agree as to the purchase price or were prevented from doing so the Secretary of State might require the amount to be settled pursuant to the Acts, and might apply for possession. In September, 1937, the Secretary of State offered a sum as compensation for the absolute purchase and finally, in exercise of his statutory powers, he purchased the premises compulsorily. In May, 1938, the official arbitrator awarded that the Secretary of State should pay the defendants £7,856 in full settlement of the claim for the premises. In July, 1938, the plaintiffs brought an action against the defendants, alleging that they had been instructed

to sell the hotel for £8,750, that they had introduced the colonel who was willing to buy at that price, that the colonel was acting for the War Office, that the defendants refused to sell at that or any reasonable price, and that, in consequence, the War Office acquired the premises compulsorily for £7,856. The plaintiffs claimed commission on the former or, alternatively, the latter sum. Lewis, J., gave judgment for the plaintiffs for commission on the latter sum.

SCOTT, L.J., allowing the defendants' appeal, said that had the sale been voluntary, the plaintiffs might have been entitled to commission, but the rule laid down by Lord Watson in *Toulmain* v. *Miller*, 58 L.T., at p. 96, applied. In a sense the introduction had been a cause of the sale, but there was no contractual relation between the plaintiffs and the defendants entitling the plaintiffs to say that in accordance with the terms of their employment they had found a ready and willing purchaser. That element was absent because the defendants' representative had said that they were unwilling to sell save for a price higher than the compulsory price.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *Goodman; Richard Powell.*

SOLICITORS: *W. C. Crocker; Lees, Smith, Crabb & Matthew.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re **Eaves; Eaves** *v.* **Eaves.**

Greene, M.R., Clauson and Goddard, L.JJ.
19th, 20th and 23rd October and 13th November, 1939.

WILL—CONSTRUCTION—WIFE TO ENJOY PROPERTY DURING WIDOWHOOD—CEREMONY OF MARRIAGE—SUBSEQUENT NULLITY DECREE ON GROUND OF INCAPACITY—EFFECT.

Appeal from Farwell, J. (83 SOL. J. 546).

By his will a testator who died in 1919 gave his wife the use during her life or widowhood of a leasehold house for the unexpired residue of the term. She and a son of the testator by a previous marriage were the executors and trustees of the will under which the son was entitled to the residue of the property absolutely. The lease having been sold, the proceeds were invested in war stock in their joint names, it being agreed that she should have the income during her life or widowhood. In 1925 she went through a ceremony of marriage. On the footing that her interest in the war stock would thereby be determined she had previously agreed to its sale and allowed the son to receive the proceeds and use them for his own purposes. In 1937 the lady obtained a nullity decree on the ground of incapacity. She now contended that her widowhood had continued since 1919, and that her interest, therefore, continued. Farwell, J., dismissed an action in which she claimed to be entitled to the income from 1925. She appealed.

GREENE, M.R., dismissing the appeal, said that on the ceremony in 1925 the son would have been entitled to call for the transfer of the fund on the ground that the widowhood stood determined. The lady would not have been entitled to postponement to see whether facts would appear which would entitle her to a nullity decree and whether she would decide to apply for one. If the court had ordered the transfer she could not have made this claim, as the transaction would have been completed and could not be reopened. If instead of obtaining an order of the court, the parties had made the transfer by agreement, the same result would have followed. Otherwise no one could safely act in a case where an interest was determinable by the termination of widowhood without getting the court's order. It made no difference that this transfer was made in contemplation of the ceremony. The transfer could not be set aside on the ground that it was made under a mistake of fact. Even assuming that the understanding was that the marriage would not be annulled, such a mistake was composite, partly of fact and partly of intention: of fact in so far as it concerned matters giving rise to the right to have the marriage annulled, of intention in so far as the exercise of an option by the lady was required before the annulment could take place. The claim was not for money had and received or analogous thereto.

CLAUSON and GODDARD, L.JJ., agreed.

COUNSEL: *Harman*, K.C., and *Winterbotham* (for *G. Upjohn*, on war service); *Spens*, K.C., and *F. Fuller.*

SOLICITORS: *Gisborne & Co.; Ward, Bowie & Co.*, for *Lane, Clutterbuck & Co.*, of Birmingham.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Newstead *v.* **London Express Newspaper, Ltd.**

Greene, M.R., MacKinnon and du Parcq, L.JJ.
20th November, 1939.

LIBEL AND SLANDER—WORDS REFERRING TO ACTUAL PERSON OTHER THAN PLAINTIFF—TRUE OF THAT PERSON—CAPABLE OF BEING UNDERSTOOD BY REASONABLE PERSONS TO REFER TO PLAINTIFF—WHETHER PLAINTIFF ENTITLED TO RECOVER.

Appeal from Hawke, J. (33 SOL. J. 548).

The plaintiff, Harold Cecil Newstead, was well known as a hairdresser in Camberwell, aged about thirty years and unmarried. The defendants, on 30th March, 1938, published in the *Daily Express* a report to the effect that "Harold Newstead, 30 year old Camberwell man" had been sent to prison for bigamy. The plaintiff alleged that the words were understood by many to refer to him. The defendants in their defence pleaded, *inter alia*, that the words were published of an existing person of the name and description contained in the words, and were intended and understood to refer to that person, who was not the plaintiff, and that in relation to that person the words were true. They pleaded justification and fair comment. The plaintiff contended that, if the words referred to some other existing person of whom they were true (which he did not admit), it was the defendants' duty to take reasonable care to give a precise and detailed description of that person, denoting him exclusively, and to ensure that the words should not be capable of referring to any other person; that the requisite description of the other person would have been: "Harold Newstead, a barman, of Crofton Road, Camberwell"; that that description was available to the defendants, as every other newspaper reporting the case had given it; that the defendants recklessly struck out the words giving the occupation and address of the person and published the words in a form capable of being understood to refer to the plaintiff. The defendants had published a correction on the 1st April, 1938. Hawke, J., left five questions to the jury, who returned answers to all save the first: "Would reasonable persons understand the words complained of to refer to the plaintiff?" They could not agree to the answer to this question. They assessed the damages, if any, at one farthing. Hawke, J., held that no judgment could be entered in the case. The defendants appealed.

GREENE, M.R., referred to *Jones* v. *E. Hulton & Co., Ltd.* [1909] 2 K.B. at pp. 480, 481, and said that the fact that defamatory words were true of A did not make it in law impossible for them to be defamatory of B. Those who made such statements might reasonably be expected to identify the persons they were seeking to describe so closely that it would be unlikely that a judge would hold them reasonably capable of referring to someone else and that a jury would find that they did so refer. The appeal should be dismissed.

MACKINNON, L.J., dissenting, said that though he doubted whether there was evidence to go to the jury on which they could answer the first question in the affirmative, his doubt was not sufficient to make him express actual dissent on that point. But he could not conceive that twelve reasonable people would arrive at a larger figure than one farthing damages. It was argued that the Court of Appeal was bound to allow a further trial of the case, but his lordship did not agree. The court sat to administer justice and not to supervise a game of forensic dialectics.

DU PARCQ, L.J., agreeing in dismissing the appeal, said that the judge was right in leaving to the jury the question whether the words were capable of a defamatory meaning. If words were capable of two or more meanings one of which was defamatory it must be left to the jury to determine in which sense a reasonable man would understand them (*Cassidy* v. *Daily Mirror Newspapers, Ltd.* [1929] 2 K.B. 331; 73 SOL. J. 348).

COUNSEL: *G. O. Slade; Denning*, K.C., and *R. M. Wilson.*
SOLICITORS: *Shirley Woolmer & Co.; Manches & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Appeals from County Courts.

Tilley *v.* Stevenson.

Slesser and Luxmoore, L.JJ., and Atkinson, J.
1st November, 1939.

NEGLIGENCE—FLAT—TENANT—PREPARING FOR OCCUPATION—BURST PIPE—DAMAGE TO FLAT BELOW—LIABILITY.

Appeal from St. Albans County Court.

The defendant was tenant of a flat which was being prepared for his occupation. He received the key on the 14th December, 1938. Other keys were given to a labourer and a painter. On the 18th December the defendant went to do some work there. There was evidence that the water supply was not then turned on. He believed that it was not, though he did not examine the stop-cock or take any other step to ascertain the position. On the 24th December a leakage occurred in a pipe in the flat and water continued to escape till the 27th December. The plaintiff, the tenant of the flat below, thereby suffered damage. There was evidence that there had been a warning on the wireless and in certain newspapers that owing to the cold water pipes might freeze. The county court judge gave judgment for the plaintiff for £22 damages on the ground that the defendant took no steps to ascertain whether the water supply was turned on.

SLESSER, L.J., allowing the defendant's appeal, said that someone else between the 18th and the 27th December must have turned the stop-cock so as to let the water into the pipes, possibly the painter or the decorator, or a water company employee. The rule in *Rylands* v. *Fletcher*, L.R. 3 H.L. 330, did not apply (see *Richards* v. *Lothian* [1913] A.C., at p. 263). The plaintiff's case must be founded on negligence, and for that there must be a duty. If there were a duty it would be one requiring the tenant of a flat, even if he were not actually living there, to stay in it so as to see that no one came in and turned on the stop-cock and to observe the climatic conditions so as to take precautions that the pipes should not burst, if he had reason to believe that there would be a frost. No such duty was imposed on a tenant. The defendant could not reasonably have expected that anyone else would turn on the water, and that it would freeze and burst the pipes.

LUXMOORE, L.J., and ATKINSON, J., agreed.

COUNSEL: *Fortune; Hackforth-Jones.*
SOLICITORS: *Braund & Hill; Peacock & Goddard*, for *Asterley Jones & Waters*, of St. Albans.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

British and Argentine Meat Co., Ltd. *v.* Randall.

Slesser and Luxmoore, L.JJ., and Atkinson, J.
7th November, 1939.

LANDLORD AND TENANT—CLAIM FOR NEW LEASE—REFEREE'S REPORT—TENDER OF FRESH EVIDENCE TO COUNTY COURT JUDGE—ASSESSMENT OF GOODWILL—LANDLORD AND TENANT ACT, 1927 (17 & 18 Geo. 5, c. 36), ss. 4, 5, 21.

Appeal from Rochester County Court.

The tenants were a company trading at over a thousand branches. They paid a yearly rent of £200 for premises in High Street, Chatham, where they carried on the business of butchers. The premises had been so used since 1910. In August, 1938, the tenants claimed a new lease under the Landlord and Tenant Act, 1927, s. 5, alleging that, though they would be entitled to compensation for goodwill under s. 4, the sum which could be awarded would not compensate them for the loss of goodwill they would suffer if they removed their business. They computed that sum at £1,000. The landlords denied that they were entitled to a new lease or to compensation, and alleged that if the premises were let to a trader other than a butcher they would attract a higher rent than a butcher would be willing to pay for them. The matter was referred to a referee under s. 21. He reported that the tenants had attached goodwill to the premises and were entitled to a new lease. He found (*inter alia*) that an ordinary trader other than a butcher would pay £375 a year for the premises, and that by reason of the goodwill a butcher would pay £400 a year. The profits of the business in 1933 had been £882, but they had declined to £242 in 1938, and the referee expressed the opinion that adverse conditions (e.g., the price of meat) were likely to continue. In computing the goodwill he reckoned the average yearly profit from 1933 to 1937 (i.e., £707) and the average yearly profit from 1936 to the first seven weeks of 1939 (i.e., £421). In May, 1937, after the making of the report, the landlords received a letter, sent on behalf of the Chatham and District Co-operative Society, offering to take a ninety-nine years' lease of the premises at a rent of £400 a year. On consideration of the report by the county court judge, the landlords tendered this letter to him. He said that, while there might be cases in which he would be prepared to consider further evidence, it would be very unsatisfactory to do so in this case. Accordingly he did not admit the letter. He adopted the report and the landlords appealed.

SLESSER, L.J., said that " each judge is at liberty to adopt, vary or disregard a finding of the referee or to hear fresh evidence on any point . . . The judgment is to be of the tribunal, the county court judge " (*Simpson* v. *Charrington & Co., Ltd.* [1934] 1 K.B., at p. 76; see also pp. 83, 94). Here the judge, not for any reason connected with the evidence tendered but on general principles, refused to consider whether it should be admitted. He did not sufficiently recognise that it was not a case of an appeal, but that he was sitting as a tribunal of first instance. Had the matter rested there, it would have been necessary to order a new trial, since the tenants might have wished to contend that the letter was not reliable or was valueless as evidence, but on the whole facts as disclosed in the referee's report (which had to be treated as the judgment of the judge, who said no more than that he would not disturb it and would accept it) the tenant had failed to show goodwill by reason whereof the premises could be let at a higher rent. It occurred at once to the mind that if in 1938 a butcher started off with a rental of £400, together with increased rates attributable to the raising of the rent from £200, there would be no profit at all. The taking of the average yearly profit was a wholly fallacious way of approaching this matter. The referee should have looked at the financial position of the business as at the time when the application for a new lease was made. He should have considered what the real substantial nature of the business was then without going back to 1933. Had he done so he must have come to the conclusion that it was certain that a butcher could not pay more for the premises than any other trader. It followed that there was no goodwill rent at all and no right to compensation or a new lease. The appeal should be allowed.

LUXMOORE, L.J., and ATKINSON, J., agreed.

COUNSEL: *Van Oss; Merlin.*
SOLICITORS: *Wood, McLellan & Williams; Wilfrid Ellis.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

The Lord Chancellor announces that the offices of the Supreme Court of Judicature will be closed on Saturday, 23rd December, 1939.

Cockwell *v.* **Romford Sanitary Steam Laundry, Ltd.**

Slesser and Luxmoore, L.JJ., and Atkinson, J.
22nd November, 1939.

LANDLORD AND TENANT—LEASE—TENANTS GIVEN OPTION TO PURCHASE FEE SIMPLE—ASSIGNMENT OF LEASE—NOTICE BY ASSIGNEES OF INTENTION TO EXERCISE OPTION—ASSIGNEES NOT PROCEEDING WITH CONTRACT—LIABILITY FOR RENT.

Appeal from Mayor's and City of London Court.

By a lease made in 1929 the defendants became tenants of certain premises for a term of fourteen years at a yearly rent of £120 payable by equal quarterly payments. By cl. 5: ". . . if the lessees shall at any time before the 24th June, 1938, give to the lessor . . . six calendar months' previous notice in writing of the desire of the lessees to purchase the fee simple of the said premises, then the lessor shall upon the expiration of such notice and upon payment of the sum of £2,000 together with interest at the rate of 5 per cent. per annum from the expiration of such notice until the completion of the purchase and of all rent hereby reserved up to such expiration assure the said premises unto the lessees for an estate in fee simple free from incumbrances." "Lessor" was defined as including the estate owner for the time being of the reversion expectant on the term granted and all other persons for the time being entitled to receive and enforce payment of the rent reserved. "Lessees" were defined as including the defendants, their successors and assigns, and all other persons deriving title under them. In 1932 the defendants assigned the lease to three assignees. There was an express assignment of the benefit of the option. On the 22nd June, 1938, the assignees gave notice to the plaintiffs, the lessor's executors, of their intention to exercise the option. They paid the rent due on the 25th June and the 29th September, but not that due on the 25th December. Meanwhile the plaintiffs' solicitors had sent their solicitors the abstract of title, but the assignees' solicitors had informed the plaintiffs' solicitors that their clients had called a meeting of their creditors and it was doubtful whether they would be able to proceed. On the 3rd January, 1939, the assignees' solicitors stated that their clients could not proceed. The plaintiffs' solicitors replied that they would not advise their clients to release them from their obligation to purchase. They also wrote to the defendants informing them of the position. The plaintiffs made no final determination to accept the assignees' conduct as a repudiation of the contract. No steps were taken to obtain rescission. In an action by the plaintiffs to recover the rent due on the 25th December, 1938, and the 25th March, 1939, the defendants admitted liability in respect of the former, but denied liability in respect of the latter. They accordingly paid £30 into court. His Honour Judge Thomas gave judgment for the plaintiffs for the full £60, with costs on County Court Scale C, down to the payment into court, and on Scale B thereafter.

LUXMOORE, L.J., delivering the court's judgment allowing the defendants' appeal, said that they contended that they were not liable in respect of rent after the 25th December, because, on the true construction of cl. 5, on the expiration of six months from the notice, the relationship between the plaintiffs and the assignees changed from that of lessors and lessees to that of vendors and purchasers, so that the term granted by the lease terminated. The plaintiffs denied that this was the true construction of cl. 5, or that the tenancy determined by operation of law. The salient feature of cl. 5 was that in the event of notice being given the rent reserved was to cease after six months, and in lieu of the liability to pay it there came into existence a new liability to pay interest at 5 per cent. per annum on the purchase price. If for any reason the purchase price was not paid till after, say, the 25th March, 1939, no liability for rent could arise. The plaintiffs had contended that the construction of cl. 5 was governed by *Weston* v. *Collins*, 34 L.J. Ch. 353, but the form of words in that case was different from the form in this. The words here were indistinguishable from those in *Mills* v. *Haywood*, 6 Ch. D. 196. On the true construction of cl. 5 a binding contract to purchase came into existence when the notice was given. The plaintiffs further contended that, even so, its existence could not operate as a surrender of the tenancy by operation of law (*Doe d. Gray* v. *Stanion*, 1 M. & W. 695). But it would be wrong to say that the tenancy was surrendered by operation of law. It was terminated under the express provision of cl. 5. The judge was wrong in holding that the lease remained in force despite the coming into existence of the contract of purchase. That disposed of the case, but the plaintiffs had argued alternatively that pending completion of the contract the lease remained in suspense. But *Raffety* v. *Schofield* [1897] 1 Ch. 937 was no authority that here the tenancy was to remain in existence and was to be treated as suspended. The appeal should be allowed. The costs down to the payment into court should be taxed on Scale B. The plaintiffs were to pay the costs after the date of payment into court, also on Scale B.

COUNSEL: *Arthur Forbes* (*W. L. James* with him); *Fortune*.

SOLICITORS: *Forbes & Son*; *Hogan & Hughes*.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

David Allen & Sons Billposting, Ltd. *v.* **Drysdale.**

Lewis, J. 17th October, 1939.

INSURANCE—OWNER OF HOUSE INSURED AGAINST LOSS BY "COLLAPSE"—HOUSE DECLARED DANGEROUS STRUCTURE—CONSEQUENT DEMOLITION—WHETHER LOSS COVERED.

Action on an insurance policy.

The plaintiff company, the owners of No. 23, Buckingham Gate, London, took out a Lloyd's insurance policy whereby they were covered against loss caused by "subsidence and/or collapse," that sum being apportioned to the building, its contents, and a year's rent. With regard to the rent, the policy provided that the underwriters would not be liable under that head unless the building were "destroyed by or so much damaged by the perils insured against as to be rendered unfit for occupation . . ." The house was of the eighteenth century, and structural repairs were effected in 1933 and 1935. At the beginning of 1938 the owners of the adjoining house, No. 24, decided to demolish it and erect another on the site. Attention was accordingly directed to the party wall between Nos. 23 and 24, a surveyor being appointed under the London Building Acts. Operations on the party wall disclosed serious defects in it, and in May, 1938, the London County Council served a dangerous structure notice on the plaintiffs in respect of it. As the demolition of No. 24 proceeded, a further dangerous structure notice was served in respect, among other things, of the external walls of No. 23. The defects discovered at that date had already made it reasonable for the plaintiffs, if not incumbent upon them, to demolish No. 23, which they accordingly did. The plaintiffs now sued the defendant in his personal capacity as an underwriter of the policy, and as representing the other underwriters, in respect of their loss through the demolition.

LEWIS, J., having reviewed the evidence, found as a fact that the defects from subsidence or settlement discovered in the party wall during the currency of the policy had all occurred before that period, and that there had been no subsidence or settlement during it. He said that the words in the policy to be construed were "subsidence and/or collapse." "Subsidence" meant sinking, that was, movement in a vertical direction. "Settlement" meant movement in a lateral direction. In his opinion, the word "subsidence" in the policy also covered settlement. The plaintiffs would accordingly have been entitled to recover had they suffered

damage by either subsidence or settlement during the currency of the policy. The plaintiffs further argued that "collapse" included compulsory demolition by an owner at the order of the London County Council; the defendants contended that "collapse" was not apt to designate the intentional demolition of any building. "Collapse" in its primary sense meant falling or shrinking together, or breaking down or giving way under external pressure or through loss of rigidity or support. In his (his lordship's) opinion, the word did not cover intentional demolition or destruction of a building by housebreakers. There was apparently no authority on the construction of the word "collapse" in a policy like the present. There must be judgment for the defendant.

COUNSEL: *Creswell*, K.C., and *Soskice*; *Willink*, K.C., and *Roskill*.

SOLICITORS: *Nicholson, Freeland & Shepherd*; *Hair & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Tooke *v.* Bennett (T.W.) & Co., Ltd.

Lewis, J. 1st November, 1939.

MONEYLENDER—CONTRACT—MEMORANDUM—REFERENCE TO BILL OF SALE ATTACHED—ONE ONEROUS TERM IN BILL ABSENT FROM MEMORANDUM—TWO DOCUMENTS TO BE READ AS ONE—CONTRACT NOT UNENFORCEABLE—MONEYLENDERS ACT, 1927 (17 & 18 Geo. 5, c. 21), s. 6.

Action claiming that certain moneylending transactions were void and unenforceable.

On the 26th May, 1938, the plaintiff entered into the last of a series of moneylending transactions which she had with the defendant company, who were registered moneylenders. Of the £35 advanced on the last occasion £28 15s. 4d. was applied to the discharge of the sum remaining due on a transaction of November, 1937. The memorandum of the contract of May, 1938, was in the following terms: "Principal advance. £35 being as to £28 15s. 4d. outstanding under a bill of sale dated 25th November, 1937, of which the undersigned [i.e., the plaintiff] was the grantor, and the sum of £6 4s. 8d. now handed the undersigned. Interest £14 6s. Rate 40 per cent. per annum . . . Security, bill of sale dated the 26th May, 1938 (as per copy attached). Value £35 and the events specified as causes of seizure in section 7 of the Bills of Sale Act (1878) Amendment Act, 1882, are as appears on the back hereof." On the back of the memorandum, which was duly signed by the plaintiff, paragraphs (1) to (5) of s. 7 of the Act of 1882 were set out. The bill of sale was in statutory form as prescribed by s. 9 of the schedule to the Act of 1882, but it contained a clause, which did not appear in the memorandum, making provision for the event of unpunctual payment of any instalment by the plaintiff. In the present action the borrower claimed various forms of relief and a declaration that eight out of the nine transactions into which she had entered with the defendants were unenforceable. It was contended for the plaintiff that the memorandum of the 26th May, 1938, was invalid because, contrary to s. 6 (2) of the Moneylenders Act, 1927, it did not contain all the terms of the contract, and that a memorandum could not be contained in two documents, if in the second document, being a bill of sale, there were an onerous condition not present in the first, reliance being placed on *Reading Trust* v. *Spero*, 74 SOL. J. 12; [1930] 1 K.B. 492. (*Cur. adv. vult.*)

LEWIS, J., said that *Mitchener* v. *Equitable Investment Co., Ltd.* (82 SOL. J. 257; [1938] 2 K.B. 559), was not directly in point. In *Reading Trust* v. *Spero*, *supra*, Scrutton, L.J., left open the question whether or not a memorandum could be contained in two documents. Greer, L.J., was of opinion that it could. The plaintiff's argument could not be accepted. Where there was a memorandum of a contract not only referring from the bill of sale specifying its date and value, but also setting out the causes for seizure referred to in the bill of sale, and further stating that a copy of the bill of sale was attached, it was impossible to hold that the two documents could not be read together. They formed one document. With regard to the interest, the rate charged was 40 per cent. The argument could not be accepted that, where a given transaction was paid off before the due date, the rate of interest became thereby increased. While that might be the result arithmetically, it was unfair to say that, because the debtor chose to pay off the debt before she was obliged to do so under her contract, the rate of interest charged her was increased. Applying the principles laid down by Clauson, J., in *Verner-Jeffreys* v. *Pinto* (140 L.T. Rep. 360; [1929] 1 Ch. 401), as the material point was not reversed in the Court of Appeal, it was clear that the plaintiff had made out that 40 per cent. was too high a rate of interest in view of the fact that the moneylenders were secured to the extent of some 75 per cent. of their advance. His lordship accordingly ordered the interest to be decreased to 30 per cent. and 35 per cent. in respect of different transactions.

COUNSEL: *Castle-Miller*; *Hallis*.

SOLICITORS: *Humphrey Razzall & Co.*; *Webster Butcher and Sons*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Mills Conduit Investments, Ltd. *v.* Tattersall.

DU PARCQ, L.J. (sitting as an additional judge). 29th November, 1939.

MONEYLENDER—CONTRACT—AMBIGUITY IN MEMORANDUM—PROMISSORY NOTE REFERRED TO IN MEMORANDUM—ONE POSSIBLE MEANING CONSISTENT WITH PROMISSORY NOTE—OTHER MEANING NOT CONSISTENT—WHETHER MEMORANDUM INVALIDATED.

Action on a moneylending contract.

The plaintiff company claimed £154 19s. 3d. from the defendant under a moneylending contract, dated 16th May, 1939. The memorandum of the contract provided that the sum advanced was to be £100, with interest at the rate of £120 per cent. a year on a promissory note payable to the plaintiff company at their address, or at such place as they might direct, on 16th August, 1939. The document provided: "and in case of default the same shall bear interest in respect of principal or interest at simple interest on that sum at the rate of £120 per cent. per annum from the date of payment until payment thereof, and all moneys paid on account of the said advance and interest shall be applied firstly in payment of the interest due to that date and then to principal." Attached to the memorandum was the promissory note referred to in it, by which note the defendant promised to pay the plaintiffs in the terms of the memorandum £100 with interest at £120 per cent. a year. The promissory note further provided "and in the event of default in payment thereof such balance of the said sum and interest so remaining due as aforesaid, and whether in respect of principal or interest, shall bear simple interest on that sum at the rate of £120 per cent. per annum from the date of payment and until payment thereof . . ." The defendant did not complain of the rate of interest charged, but counsel contended on his behalf that the memorandum did not set out the true contract in compliance with s. 6 of the Moneylenders Act, 1927, in that its terms were contradictory of those of the promissory note. It was contended that the words in the memorandum "and in case of default the same shall bear interest in respect of principal or interest at simple interest on that sum at the rate of £120 per cent. per annum," were either ambiguous or clearly meant that the plaintiffs might in case of default charge interest at the rate mentioned either on the principal or on the interest, but not on both; and that that meaning was contradictory of the promissory note the wording of which "whether in respect of principal or interest" allowed a charge of interest on both principal and interest.

DU PARCQ, L.J., said that he would refer to the rate of interest charged although the defendant raised no defence

with regard to it. By the Act of 1927 interest in excess of 18 per cent. was to be presumed excessive. Had he not had the guidance of the Court of Appeal he would have said that it took even more than had been proved in the present case to justify a charge of 120 per cent. But the Court of Appeal had taken the view that, when a borrower knew what he was about and had no security to offer, and when there was nothing to indicate that any advantage was being taken of him, then a high rate of interest might be allowed. With regard to the defence raised, where, as here, the memorandum referred to the promissory note, although it did not refer the borrower to the note for its express terms, if that memorandum contained a sentence which appeared ambiguous on the face of it and there were a term in the promissory note which was consistent with one of the possible interpretations of the memorandum although inconsistent with the other, the memorandum might be regarded as a true statement of the contract. In other words, if the memorandum of a money-lending contract were susceptible of two meanings, one both as open to the reader as the other, and also correctly representing the agreement between the parties, then the memorandum could not be held bad because of a possible reading of it which did not truly represent that agreement. There must be judgment for the plaintiffs.

COUNSEL: *R. F. Levy*, K.C., and *Cyril Salmon*, for the plaintiffs; *Leonard Pearl*, for the defendant.

SOLICITORS: *Woolfe & Woolfe; J. F. B. Satchell.*

[Reported by R. C. CALBURN, Esq., Barrister-at Law.]

Concrete, Ltd. *v.* Attenborough.

Branson, J. 11th December, 1939.

INSURANCE—POLICY COVERING BUILDING CONTRACTOR AGAINST LEGAL LIABILITY FOR ACCIDENT CAUSED BY HIS NEGLIGENCE—CONDITION REQUIRING ASSURED TO EXERCISE REASONABLE CARE—WHETHER REPUGNANT TO POLICY.

Action tried by Branson, J., in the Commercial List.

By a Lloyd's public liability policy, dated 19th January, 1938, the defendant agreed to indemnify the plaintiffs against all sums which they might become legally liable to pay in respect of claims made against them for, *inter alia*, bodily injury to persons resulting from any accident occurring at specified places between the 1st January and the 31st December, 1938, caused by "the fault or negligence of the assured or any of his (their) employees while engaged in the assured's business . . . and/or by any defect in the assured's premises, ways, works, machinery or plant used in the said business or in or about the said places . . ." The policy also contained the following provision under the heading "Conditions." "8. The assured shall . . . exercise reasonable care in seeing that the ways, implements, plant, machinery and appliances used in . . . their business are . . . sound . . . and that all reasonable safeguards and precautions against accident are provided . . ." The plaintiffs were sub-contractors charged with the construction of the floors for the extension to the Bodleian Library at Oxford. One, Gascoigne, who was employed by another firm of sub-contractors engaged on the building, having fallen through an unfenced hole in the third floor of the partially erected building, brought an action, claiming damages for negligence and breach of statutory duty against both his employers and the present plaintiffs. The defendants having refused the plaintiffs' request for an indemnity in respect of Gascoigne's claim, the plaintiffs entered into an agreement of compromise whereby Gascoigne received a sum of money which was paid as to four-fifths by the plaintiffs and as to one-fifth by his employers. The plaintiffs now sued the defendants for a declaration that they were entitled to be indemnified under the policy. It was conceded in argument that Gascoigne's claim against the plaintiffs would have failed so far as based on an alleged breach of the Building Regulations made under the Factory and Workshop Act, 1901, which are preserved by s. 159 (1) of the Factories Act, 1937. It was contended for the defendants that they were preserved from liability by No. 8 of the conditions in the policy on the ground that the plaintiffs had not exercised reasonable care to keep the hole in the floor safe. It was contended for the plaintiffs that Condition 8 was repugnant to the general purport of the policy, as the assured could not at the same time be negligent and exercise reasonable care.

BRANSON, J., said that Gascoigne's claim against the plaintiffs for breach of statutory duty would have failed because *Claydon* v. *Sir Lindsay Parkinson, Ltd.* (1939), 83 SOL. J. 297; 55 T.L.R. 515, decided that a claim by a workman for damages for a breach of the building regulations lay only against his employer. He (his lordship) found that there had been a breach of the building regulations, but that the plaintiffs had not been guilty of negligence, so that Gascoigne's claim against them would have failed under both heads. It was accordingly unnecessary for him to decide the point raised on Condition 8 of the policy, and his remarks on that subject would be *obiter*. It was wrong in principle to contend that, where in a policy there was a general liability expressed to be subject to certain conditions, a condition limiting that liability in certain respects was repugnant to the policy as a whole and could be disregarded. It was the very function of the conditions in a policy to limit the extent of the general undertaking given in the first instance. It was only if words in a contract were found, after they had been given their fair and ordinary meaning, to have the result of cancelling the original contract that the question of repugnancy arose at all. If the assured took reasonable care in the sense indicated by Condition 8 he was entitled to compensation, even if it turned out that the ways, implements, etc., were not substantial and sound. Thus there could be a position where an accident happened through the assured's fault under the Factory and Workshop Act, but where he could nevertheless recover under the policy because he had taken reasonable precautions. The action therefore failed.

COUNSEL: *H. D. Samuels*, K.C., and *R. Armstrong Jones; Sir Robert Aske*, K.C., and *H. G. Robertson.*

SOLICITORS: *Oswald Hickson, Collier & Co.; Simmons and Simmons.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Rushbrook *v.* Rushbrook (by her Guardian).

Langton, J. 11th October, 1939.

DIVORCE—DESERTION—CERTIFICATION OF DESERTING SPOUSE—ANIMUS DESERENDI—IRREBUTABLE PRESUMPTION—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 & 1 Geo. 6, c. 57), s. 2.

This was a husband's petition for dissolution of marriage. The wife defended by her guardian *ad litem*, the Official Solicitor. The case raised the question as to whether the court was able to go into the question whether facts showed that a certified lunatic exhibited an *animus deserendi* which had been the subject of expression of divergent views in *Bennett* v. *Bennett* (1939), 83 SOL. J. 441, and *Williams* v. *Williams* (1939), 83 SOL. J. 318, 700.

LANGTON, J., in giving judgment, said that the parties were married on 4th August, 1930. On 21st January, 1931, the respondent undoubtedly deserted her husband without cause. On 7th March, 1937, a period of just more than a year before the presentation of the petition on 20th April, 1938, the respondent was certified as a lunatic. During the whole of that succeeding year until the presentation of the petition she remained a certified lunatic, and in August, 1938, her condition, which up to that time was described by the doctor as an ascertainable condition of *dementia præcox*, the form of lunacy being the schizophrenic type, took a considerable turn for the worse, and the respondent to-day was still a certified lunatic, and it now appeared there was

little hope of recovery. The case as presented by counsel for the petitioner was that, in spite of the fact that the respondent had been, during the period of thirteen months of the period described by the Act as the last three years before the petition was presented, a certified lunatic, there was ground for argument that she was, during that period, able to exercise a sufficiently rational judgment upon the question of her relations with her husband to enable the court to infer that she had a continuing *animus deserendi*. But in law, the matter as left by the Court of Appeal in *Williams* v. *Williams*, *supra*, seemed to stand thus: Where a person was proved to be a lunatic accepted in law by certification as a lunatic, it was, in the words of Sir Wilfrid Greene, M.R., impossible to make any inference at all that the lunatic was capable of having an *animus deserendi*. Counsel for the respondent had argued that that was not the meaning of the judgment in *Williams* v. *Williams*, *supra*, in the Court of Appeal, and had argued that the passage in the judgment of Bucknill, J., in *Bennett* v. *Bennett*, *supra*, at p. 280, was the proper and still standing statement of the law on the subject—namely, that such were cases in which there was a rebuttable presumption. The rebuttable presumption was that, if a person was a lunatic, he was incapable of forming a rational judgment on the question, but, if medical evidence established that, in spite of his acknowledged weakness, it was possible for any individual lunatic to form a judgment upon such matter, that evidence could be admitted. That decision of Bucknill, J., had been before the Court of Appeal and considered by them before delivering judgment in *Williams* v. *Williams*, *supra*, and, although the case was mentioned on more than one occasion in the judgment which fell from MacKinnon, L.J., he, his lordship (Langton J.), did not understand any of the judgments of the Court of Appeal to accept the principle laid down by Bucknill, J. It was true that in that case Bucknill, J., decided as a matter of fact that the presumption was not rebuttable, and therefore there was no reason why the Court of Appeal should desire to overrule a judgment with which they no doubt would have agreed, but he, his lordship (Langton J.), did not understand that they left the matter, where a person was once an accepted, certified lunatic, as being open to argument at all. His reading of the judgment of Sir Wilfrid Greene, M.R., was that it meant that it was not possible to make any inferences at all concerning people who were certified lunatics, and upon that ruling it seemed to him that the case present was unarguable. His lordship then dealt with the facts and decided against the petitioner. For the reasons stated, the proper reading of the judgment of the Court of Appeal in *Williams* v. *Williams*, *supra*, did not allow such questions of fact to be entered into; but even if it did he still could not help the petitioner. Petition dismissed.

COUNSEL: *R. J. A. Temple*, for the petitioner; *Holroyd Pearce*, for the respondent.

SOLICITORS: *Worthington, Evans, Dauney & Co.; The Official Solicitor.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Societies.

Solicitors' Benevolent Association.

The monthly meeting of the directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, the 6th December. Mr. Henry White, M.A. (Winchester), was in the chair and the following directors were present: Mr. Gerald Keith, O.B.E. (vice-chairman), Mr. G. L. Addison, Mr. G. C. Blagden, M.A., LL.B., Mr. W. E. M. Blandy, M.A. (Reading), Mr. Ed. Bramley, M.A., LL.D., J.P. (Sheffield), Mr. R. Bullin, T.D., J.P. (Portsmouth), Sir Edmund Cook, C.B.E., LL.D., Mr. C. H. Culross, Mr. T. S. Curtis, Mr. E. F. Dent, Sir Norman Hill, Bart., and Mr. Harvey F. Plant, M.C. £1,512 3s. was distributed in grants to necessitous cases and five new members were admitted.

War Legislation.

(*Supplementary List, in alphabetical order, to those published, week by week, in* THE SOLICITORS' JOURNAL, *from the 16th September to 9th December, inclusive.*)

ROYAL ASSENT.

The following Bills received the Royal Assent on the 14th December:—

Expiring Laws Continuance.
Postponement of Enactments (Miscellaneous Provisions).

Progress of Bills.

House of Lords.

India and Burma (Miscellaneous Amendment) Bill [H.L.].
Read Third Time. [13th December.

House of Commons.

Gas and Steam Vehicles (Excise Duties) Bill [H.C.]
Read First Time. [13th December.

Statutory Rules and Orders.

No. 1733. **Beer.** The Spoilt Beer Regulations, dated December 1.

No. 1756. **Customs.** Export Licence—Channel Islands. Open General Export Licence for Diamonds, dated December 5.

No. 1755. Customs. The Additional Import Duties (No. 8) Order, dated December 8. (Amendments to Additional Import Duties Orders No. 3, 1937, and No. 7, 1939.)

No. 1762. **Emergency Powers (Defence).** Order in Council, dated December 11, adding Paragraph (2) to Regulation 3 of the Defence (General) Regulations, 1939.

No. 1692. Emergency Powers (Defence). Order in Council, dated November 23, amending the Defence (Agriculture and Fisheries) Regulations, 1939. (Amended Reprint.)

No. 1747. Emergency Powers (Defence). Docks. The Port of London (Increase of Charges) Order, dated November 28.

No. 1750. Emergency Powers (Defence). The Control of Mercury (No. 2) Order, dated December 5.

No. 1737. Emergency Powers (Defence). The Persons in Custody (Photography and Measurement) (No. 2) Rules, dated November 30.

No. 1763. Emergency Powers (Defence). The Control of Tin (No. 2) Order, dated December 8.

No. 1753/S. 126. **National Health Insurance** (Medical Benefit) Amendment Regulations (Scotland) (No. 2), dated November 30.

Nos. 1742/3. **War Risks Insurance** (General Exceptions) (Nos. 3 and 4) Orders, dated December 3.

No. 1749. **Workmen's Compensation.** The Various Industries (Silicosis) (No. 3) Amendment Scheme, dated December 1.

Non-Parliamentary Publications.

MINISTRY OF HOME SECURITY.

War-Time Lighting Restrictions. Shops—Window Displays and Illuminated Signs. December 4.

STATIONERY OFFICE.

List of Emergency Acts and Statutory Rules and Orders. Revised to November 14th, 1939. Supplement 3, December 6th, 1939.

Copies of the above Acts, Bills, S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The Colonial Office announce that the King has been pleased to approve the appointment of Mr. J. C. HOWARD, Legal Secretary, to be Chief Justice of Ceylon, in succession to Sir Sidney Abrahams, who has retired.

The Colonial Legal Service announce the following promotions, transfers and re-appointments: T. F. GOODMAN, District Magistrate, to be Chief Registrar, Supreme Court, Gold Coast; T. H. MAYERS, Resident Magistrate, Jamaica, to be Crown Counsel, Nigeria; A. H. WEBB, Chief Justice, Sierra Leone, to be Chief Justice, Tanganyika Territory.

Dr. W. H. HEDDY, of East Sheen, Surrey, has been appointed Coroner for East London.

Mr. HENRY WILLIAM BARNARD, K.C., and Mr. HARTLEY WILLIAM SHAWCROSS, K.C., have been elected Masters of the Bench of the Honourable Society of Gray's Inn.

Mr. ROLAND EDMUND LOMAX VAUGHAN WILLIAMS, K.C., has been elected Treasurer of Lincoln's Inn for the year commencing 11th January next. Mr. Vaughan Williams's father, the late Lord Justice Vaughan Williams, was Treasurer of the Inn in 1912.

Notes.

The next Quarter Sessions of the Peace for the Borough of Wolverhampton will be held at the Sessions Court, Town Hall, North Street, Wolverhampton, on Friday, 5th January, 1940, at 10 a.m.

Two former Lord Chancellors, Lord Maugham and Lord Sankey, sat with the present holder of the office (Lord Caldecote) when the Judicial Committee of the Privy Council met on Monday last.

Mr. W. N. Haden, for forty-two years a member of the Trowbridge bench of magistrates, has announced that he will take the advice of the Lord Chancellor with regard to older magistrates and retire at the end of the year. Another magistrate, Major T. H. Clark, announced a similar decision.

Wills and Bequests.

Mr. William Henry Eyre, solicitor, of Barnes, S.W., and of Golden Square, E.C., left £27,454, with net personalty £17,327.

Sir William Fry, D.L., solicitor, of Hook Heath, Woking, formerly of Dublin, left estate in Great Britain, £27,260, with net personalty £26,130.

Mr. William Trevena Williams Idris, Barrister-at-Law, of Highgate, N., chairman of Idris, Limited, left £17,048, with net personalty £9,883.

Mr. Charles Miskin Laing, J.P., Barrister-at-Law, of Richmond, Surrey, left £12,361, with net personalty £11,046.

Mr. Herbert Francis Lowe, solicitor, of Bridlington, left estate £28,935, with net personalty £27,752.

Mr. John Moore-Bayley, retired solicitor, of Barnt Green, Worcs, left estate of the gross value of £31,191, with net personalty £23,532. He left £100 each to the People's Dispensary for Sick Animals of the Poor, the Royal Society for the Prevention of Cruelty to Animals and the Bromsgrove Cottage Hospital.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	MR. JUSTICE FARWELL.
	Mr.	Mr.	Mr.
Dec. 18	Jones	Ritchie	Reader
,, 19	Ritchie	Blaker	Andrews
,, 20	Blaker	More	Jones
,, 21	More	Reader	Ritchie
,, 22	Reader	Andrews	Blaker
,, 23	Andrews	Jones	More

	GROUP A.		GROUP B.	
DATE.	MR. JUSTICE BENNETT. Non-Witness.	MR. JUSTICE SIMONDS. Witness.	MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE MORTON. Witness.
	Mr.	Mr.	Mr.	Mr.
Dec. 18	Blaker	Jones	Andrews	More
,, 19	More	Ritchie	Jones	Reader
,, 20	Reader	Blaker	Ritchie	Andrews
,, 21	Andrews	More	Blaker	Jones
,, 22	Jones	Reader	More	Ritchie
,, 23	Ritchie	Andrews	Reader	Blaker

The Christmas Vacation will commence on the 24th December, 1939, and terminate on the 6th January, 1940, inclusive.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October 1939) 2%. Next London Stock Exchange Settlement, Thursday, 21st December, 1939.

	Div. Months.	Middle Price 13 Dec. 1939.	Flat Interest Yield. £ s. d.	‡ Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	104	3 16 11	3 13 8
Consols 2½%	JAJO	67⅞	3 13 9	—
War Loan 3½% 1952 or after	JD	92½	3 15 8	—
Funding 4% Loan 1960-90	MN	105⅝	3 15 8	3 11 10
Funding 3% Loan 1959-69	AO	92¼	3 5 0	3 8 6
Funding 2¾% Loan 1952-57	JD	91	3 0 5	3 9 2
Funding 2½% Loan 1956-61	AO	85½	2 18 8	3 10 0
Victory 4% Loan Av. life 21 years	MS	105½	3 16 0	3 12 10
Conversion 5% Loan 1944–64	MN	108¾	4 12 4	2 15 10
Conversion 3½% Loan 1961 or after	AO	93	3 15 3	—
Conversion 3% Loan 1948-53	MS	97½	3 1 6	3 4 9
Conversion 2½% Loan 1944-49	AO	95¼	2 12 6	3 1 8
National Defence Loan 3% 1954-58	JJ	91⅜xd	3 3 4	3 7 6
Local Loans 3% Stock 1912 or after	JAJO	79¾	3 15 3	—
Bank Stock	AO	311½	3 17 0	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	74½	3 13 10	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	79½	3 15 6	—
India 4½% 1950-55	MN	103½	4 6 11	4 1 4
India 3½% 1931 or after	JAJO	82	4 5 4	—
India 3% 1948 or after	JAJO	70	4 5 9	—
Sudan 4½% 1939-73 Av. life 27 years	FA	106	4 4 11	4 2 6
Sudan 4% 1974 Red. in part after 1950	MN	103½	3 17 4	3 12 2
Tanganyika 4% Guaranteed 1951-71	FA	103	3 17 8	3 13 4
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	104	4 6 6	2 10 0
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	87	2 17 6	3 11 7
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	97½	4 2 1	4 3 0
Australia (Commonw'th) 3% 1955-58	AO	83½	3 11 10	4 5 8
*Canada 4% 1953-58	MS	106½	3 15 1	3 8 2
Natal 3% 1929-49	JJ	95	3 3 2	3 13 11
New South Wales 3½% 1930-50	JJ	93½	3 14 10	4 5 0
New Zealand 3% 1945	AO	92½	3 4 10	4 11 8
Nigeria 4% 1963	AO	101½	3 18 10	3 18 0
Queensland 3½% 1950-70	JJ	86½	4 0 11	4 6 1
South Africa 3½% 1953-73	JD	99½	3 10 4	3 10 6
Victoria 3½% 1929-49	AO	94½	3 14 1	4 3 8
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	76	3 18 11	—
Croydon 3% 1940-60	AO	88	3 8 2	3 17 6
Essex County 3½% 1952-72	JD	97	3 12 2	3 13 2
Leeds 3% 1927 or after	JJ	76xd	3 18 11	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	89	3 18 8	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	66	3 15 9	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	78	3 16 11	—
Manchester 3% 1941 or after	FA	77	3 17 11	—
Metropolitan Consd. 2½% 1920-49	MJSD	94½	2 12 11	3 3 0
Metropolitan Water Board 3% "A" 1963-2003	AO	78½	3 16 5	3 18 5
Do. do. 3% "B" 1934-2003	MS	81	3 14 1	3 15 10
Do. do. 3% "E" 1953-73	JJ	87	3 9 0	3 13 6
*Middlesex County Council 4% 1952-72	MN	102	3 18 5	3 16 0
* Do. do. 4½% 1950-70	MN	105	4 5 9	3 18 6
Nottingham 3% Irredeemable	MN	76	3 18 11	—
Sheffield Corp. 3½% 1968	JJ	95	3 13 8	3 15 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	100½	3 19 7	—
Gt. Western Rly. 4½% Debenture	JJ	105½	4 5 4	—
Gt. Western Rly. 5% Debenture	JJ	117½	4 5 1	—
Gt. Western Rly. 5% Rent Charge	FA	111	4 10 1	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	107	4 13 5	—
Gt. Western Rly. 5% Preference	MA	87	5 14 11	—
Southern Rly. 4% Debenture	JJ	99½xd	4 0 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	101½xd	3 18 10	3 18 3
Southern Rly. 5% Guaranteed	MA	107½	4 13 0	—
Southern Rly. 5% Preference	MA	89	5 12 4	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.